No. 7103

United States
Circuit Court of Appeals
For the Ninth Circuit

BELRIDGE OIL COMPANY, a Corporation,
Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Respondent.

Transcript of Record

Upon Petition to Review an Order of the United States Board of Tax Appeals.

FILED
MAR 27 1933
PAUL P. O'BRIEN,
CLERK

PERNAU-WALSH PRINTING CO., 755 MARKET ST., SAN FRANCISCO

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INDEX

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

Index Page

APPEARANCES.

CLAUDE I. PARKER, Esq.,
JOHN B. MILLIKEN, Esq.,
For Taxpayer.

R. W. WILSON, Esq.,
For Commissioner.

DOCKET ENTRIES.

Transferred to Mr. Morris 10/31/31

1927

Sep. 14—Petition received and filed. Taxpayer notified. (Fee paid.)

Sep. 15—Copy of petition served on General Counsel.

Nov. 14—Answer filed by General Counsel.

Nov. 16—Copy of answer served on taxpayer. Circuit Calendar.

1930

Jan. 16—Notice of appearance of John B. Milliken as counsel for taxpayer filed.

Mar. 19—Hearing set May 22, 1930, Los Angeles, California.

May 22—Hearing had before Mr. McMahon—called on merits—briefs due 8/15/30—reply brief in 15 days.

July 9—Transcript of hearing 5/22/30 filed.

July 29—Motion for extension to 9/15/30 to file brief and October 1, 1930, to file reply brief filed by taxpayer. 7/30/30 granted.

1930

Aug. 4—Brief filed by General Counsel.

Sep. 15—Brief filed by taxpayer. 9/20/30 copy served.

Sep. 26—Reply brief filed by taxpayer.

1932

Aug. 16—Findings of fact and opinion rendered, Mr. Morris, Div. 14. Judgment will be entered for Commissioner.

Aug. 17—Decision entered, Mr. Black, Div. 15.

Nov. 15—Petition for review by U. S. Circuit Court of Appeals (9) with assignments of error filed by taxpayer.

Nov. 15—Proof of service filed.

Dec. 19—Agreed statement of evidence lodged.

Dec. 19—Præcipe filed—proof of service thereon.

Dec. 20—Agreed statement of evidence approved and ordered filed.

1933

Jan. 13—Order enlarging time to 3/1/33 for transmission and delivery of record entered.

Feb. 24—Order enlarging time to March 15, 1933, for transmission and delivery of record entered. [1]*

*Page numbering appearing at the foot of page of original certified Transcript of Record.

United States Board of Tax Appeals.

Docket No. 31,218

BELRIDGE OIL COMPANY,
1106 Bank of Italy Building,
Los Angeles, California,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,
Washington, D. C.,

Respondent.

PETITION.

The above-named taxpayer hereby appeals from the determination by the Commissioner of Internal Revenue set forth in his deficiency letter (IT:CA: 2113-9-60D), dated July 18, 1927, and as the basis for its appeal sets forth the following:

1. Taxpayer is a domestic corporation of the State of California, under the laws of which state it was organized in January, 1911, and has its principal place of business at 1106 Bank of Italy Building in the City of Los Angeles.

2. The deficiency letter, copy of which is attached hereto, was mailed to taxpayer on or about July 18, 1927, and states a deficiency in tax for the years 1921 to 1923, inclusive, in the respective sums of $45,293.85, $4,692.89 and $4,684.91, a total deficiency for the three years of $54,671.65.

3. The taxes in controversy are income and profits taxes for the years 1921 to 1923, inclusive, and are more than $10,000.00, to wit: $54,671.65. [2]

4. The determination of the deficiency as stated in the Commissioner's letter above referred to is based upon the following errors:

(a) The Commissioner erred in eliminating from invested capital of the corporation for the year 1921 the sum of $974,995.00, the same being the excess of the par value of the stock, $999,995.00, specifically issued in January, 1911, for an option to purchase over the $25,000.00 which certain individuals had previously paid for such option, which option enabled the corporation to purchase over 30,000 acres of prospective oil land at an average price of approximately $33.00 per acre, a price insignificant when compared with the actual value at that time of probable oil land. In other words, the Commissioner erred in not permitting this option (tangible property) to be included in invested capital in an amount not less than the par value of the capital stock specifically issued for it, the actual cash value of the asset at that time being not less than the par value of the stock so issued.

5. The facts upon which petitioner relies as the basis for its appeal are as follows:

(a) For several years prior to 1911 the oil industry in California had made wonderful strides due to the discovery of new oil-bearing sands. Messrs. Burton E. Green and M. H. Whittier early became interested in this industry and during the years 1909 and 1910 gave no little of their time and attention to the seeking out with a view to acquiring, either by lease or purchase, prospective

oil lands with sufficient acreage to be worth while in the event they proved productive of oil in commercial quantities. Scouts were employed to carefully inspect and view lands either adjacent to, or remote from, fields then [3] proven. Among others employed in this scouting service and representing Messrs. Green and Whittier and their associates was a Mr. Van Slyke, a practical oil man having by reason of his experience, general knowledge of the geological formation of California and the structures from which oil was most likely to be produced. His investigations led him into Kern County, California, in certain portions of which oil had heretofore been discovered and was being produced in substantial quantities. Lands adjacent to the then producing fields were unavailable to Messrs. Green and Whittier and their associates, for the reason that they had been previously acquired by interests which had made prior discoveries. It was left to them, therefore, to spy out other lands somewhat remote from the producing fields having practically the same topography and geological structure. On one of his scouting trips Mr. Van Slyke more or less accidentally came to a point from which petroleum was seeping. A study of the geological structure, in so far as that was possible from the surface outcropping, and a comparison of the structure and formation with that of producing territory some distance away, with a complete examination of the outcropping, convinced Mr. Van Slyke that the seepage marked the center of what was highly probable, almost certain oil producing territory. This

discovery was reported to Messrs. Green and Whittier, who made an investigation and were also convinced that the territory surrounding the point of seepage was underlain with rich oil-bearing sands. So thoroughly convinced were they of the richness of the find that for themselves and their associates they were willing to pay a substantial sum of money looking to the purchase of the land. Not desiring at that time to be personally known in the negotiations, they took steps through a [4] third party, Mr. W. J. Hole, to secure from the owner, Mrs. Emily J. Hopkins, an option to purchase, not only a section or small parcel of land immediately surrounding the point of seepage, but a tract of more than 30,000 acres, all of which was from their viewpoint highly prospective and probable oil territory.

As a result of the negotiations which Mr. Hole carried on, Mrs. Hopkins, to whom information in respect of the seepage discovery had not been communicated, on January 5, 1911, for a consideration of $25,000.00 in cash to her paid, entered into an agreement whereby she granted to Messrs. Green, Whittier and their associates an option to purchase 30,845.96 acres of land for a price of $33.33-1/3 per acre, a total agreed purchase price under the option for the entire tract of $1,028,198.60, payable in certain specified installments spread over the next succeeding two years.

Convinced of the great value of this property and in order to be in a better position to finance and operate the same, the promoters organized the

Belridge Oil Company, which company was incorporated under the laws of the State of California on January 25, 1911, with an authorized capital stock of $1,000,000.00—that is, 1,000,000 shares at a par value of $1.00 per share, all of which, except five shares issued to the incorporators for cash, was issued to the incorporators for the aforesaid option.

In pursuance of the plan of organization this option, with all the benefits and advantages which it carried, was assigned or transferred to the corporation in exchange for 999,995 shares, of the par value of $1.00 each, of the capital stock of the company. The land thus acquired under the option, being highly probable oil land, [5] had a then actual cash value of at least $2,056,397.20—that is, a value equal to at least twice the price at which, under the option, it could be purchased. By reason of having secured the option, the corporation was in a position to buy and did buy the entire tract of land for $1,028,198.60. The option then had an actual cash value to the corporation at the time it was acquired of not less than $1,028,198.60 and, being tangible property, is properly includable in invested capital in an amount not less than the par value, viz.: $999,995.00 of the capital stock specifically issued for it.

6. The petitioner prays for relief from the deficiency asserted by the respondent on the following and each of the following particulars:

(a) That it be allowed to include in invested capital for the year 1921 the amount of $974,995.00, being the excess of the par value of the stock $999,-995.00 specifically issued in January, 1911, for the option to purchase, over the $25,000.00 cash which certain individuals had previously paid for such option.

WHEREFORE, petitioner prays that this Board may hear and redetermine the deficiency herein alleged.

H. L. WESTBROOK,
Treasurer Belridge Oil Co.

State of California,
County of Los Angeles.—ss.

H. L. Westbrook, being duly sworn, says: That he is the Treasurer of the Belridge Oil Company above named, and as such is duly authorized to verify the foregoing petition. That he has read the foregoing petition, or had the same read to him, and is familiar with the statements contained therein, and that the facts stated are true, except as to those facts stated to be on information and belief [6] and those facts he believes to be true.

H. L. WESTBROOK.

Subscribed and sworn to before me this 9th day of September, 1927.

[Seal] MARGUERITE LE SAGE,
Notary Public in and for the County of Los Angeles, State of California. [7]

Treasury Department,
Washington.

July 18, 1927.

Office of
Commissioner of Internal Revenue.
IT:CA:2113-9-60D
Belridge Oil Company,
1106 Bank of Italy Building,
Los Angeles, California.
Sirs:

The determination of your income tax liability for the years 1921 to 1923, inclusive, pursuant to an examination of your books of accounts and records, disclosed a deficiency in tax amounting to $54,671.65, as shown in the attached statement.

In accordance with the provisions of Section 274 of the Revenue Act of 1926, you are allowed 60 days from the date of mailing of this letter within which to file a petition for the redetermination of this deficiency. Any such petition must be addressed to the United States Board of Tax Appeals, Earle Building, Washington, D. C., and must be mailed in time to reach the Board within the 60-day period, not counting Sunday as the sixtieth day.

Where a taxpayer has been given an opportunity to file a petition with the United States Board of Tax Appeals and has not done so within the 60 days prescribed and an assessment has been made, or where a taxpayer has filed a petition and an assessment in accordance with the final decision on

such petition has been made, the unpaid amount of the assessment must be paid upon notice and demand from the Collector of Internal Revenue. No claim for abatement can be entertained.

If you acquiesce in this determination and do not desire to file a petition with the United States Board of Tax Appeals, you are requested to execute a waiver of your right to file a petition with the United States Board of Tax Appeals on the inclosed Form A, and forward it to the Commissioner of Internal Revenue, Washington, D. C., for the attention of IT:CA:2113-9-60D.

In the event that you acquiesce in a part of the determination, the waiver should be executed with respect to the items to which you agree.

Respectfully,

D. H. BLAIR,
Commissioner.
By C. R. NASH,
Assistant to the Commissioner.

Inclosures:
Statement
Form A
Form 882 [8]

STATEMENT.

IT:CA:2113-9-60D

In re: Belridge Oil Company,
1106 Bank of Italy Building,
Los Angeles, California.

Year	Deficiency in Tax
1921	$ 45,293.85
1922	4,692.89
1923	4,684.91
Total	$ 54,671.65

1921

Net income reported	$ 437,878.28
Add:	
Donations	700.00
Excessive depreciation	638.00
Income from salvage of well 393	495.00
Excessive loss claimed on wells	25,113.35
Total corrected net income	$ 464,824.63

Invested Capital

Capital stock as at January 1, 1921	$1,000,000.00
Surplus	637,056.29
Surplus reserve appreciation earned	1,279,400.91
Overpayment 1918 tax	6,127.99
Overpayment 1919 tax	1,190.81
Total	$2,923,776.00

Deduct:	
Prior year's income tax prorated from dates of payment	$107,615.47
Additional tax 1917	751.69
Stock discount	974,995.00
Dividend paid 1/22/21 prorated	47,123.29
Dividend paid 2/23/21 prorated	42,739.73
Dividends paid after 60 days in excess of earnings less accrued taxes:	
Dividend paid 3/25/21 prorated	118,882.79
Dividend paid 4/21/21 prorated	13,085.12
Dividend paid 5/21/21 prorated	9,403.89

[9]

Forwarded		$2,923,776.00
Dividend paid June 21, 1921, prorated	$ 7,492.61	
Dividend paid July 31, 1921, prorated	6,854.39	
Dividend paid August 22, 1921, prorated	4,651.87	1,333,595.91
Balance		$1,590,180.09
Inadmissibles .0005%		795.09
Invested capital		$1,589,385.00
Excess profits credit		130,150.80
Excess profits tax		96,324.29
Income tax		36,850.03
Total tax liability		$ 133,174.32
Total tax assessed		87,880.47
Deficiency		$ 45,293.85

1922

Net income reported	$ 356,281.03
Add:	
Excessive depreciation	37,543.10
Net income corrected	$ 393,824.13
Tax liability at 12½%	49,228.02
Tax assessed	44,535.13
Deficiency	$ 4,692.89

1923		
Net income reported		$ 135,099.02
Add:		
Excessive depreciation		39,316.35
Total		$ 174,415.37
Deduct:		
Loss on Well 371	$1,832.74	
Interest on income tax	4.34	1,837.08
Net income corrected		$ 172,578.29
		[10]
Tax liability at 12½%		$ 21,572.29
Tax assessed		16,887.38
Deficiency		$ 4,684.91

The adjustment on account of excessive depreciation as made by the Revenue Agent in his report dated November 19, 1926, a copy of which has been furnished you, has been approved by this office.

The excessive loss on wells has been disallowed for the reason this has been ruled allowable in prior years and has been so allowed by this office. The loss allowed for this year is on well #22-#365, as shown by the agent's report.

Donations have been disallowed in accordance with Article 562, Regulations 62. Since the entire loss on well #393 was allowed as a deduction in prior years, any amounts recovered on account of salvage constitutes income in the year received.

The adjustment to invested capital on account of dividends is in accordance with Article 857, Regulations 62.

Federal income taxes have been adjusted from the date they became due and payable.

The stock discount has been excluded from invested capital for the same reason as shown in office letter dated May 17, 1924, a copy of which has previously been furnished you.

Payment should not be made until a bill is received from the Collector of Internal Revenue for your district and remittance should then be made to him.

[Endorsed]: Filed September 14, 1927. [11]

[Title of Court and Cause.]

ANSWER.

The Commissioner of Internal Revenue, by his attorney, C. M. Charest, General Counsel, Bureau of Internal Revenue, for answer to the petition of the above named taxpayer, admits and denies as follows:

1. Admits the allegations in paragraph 1 of the petition.

2. Admits the allegations in paragraph 2 of the petition.

3. Admits the allegations in paragraph 3 of the petition.

5. Denies the allegations in paragraph 5 of the petition.

Denies generally and specifically each and every allegation in taxpayer's petition not hereinbefore admitted, qualified, or denied.

C. M. CHAREST,
General Counsel,
Attorney for Commissioner of Internal Revenue.

JOHN D. FOLEY,
Special Attorney,
Bureau of Internal Revenue,
Of Counsel.

[Endorsed]: Filed November 14, 1927. [12]

[Title of Court and Cause.]

Promulgated August 16, 1932.

"Actual Cash Value" of an option, paid in for capital stock, determined for invested capital purposes.

JOHN B. MILLIKEN, Esq., for the petitioner.

R. W. WILSON, Esq., for the respondent.

This proceeding is for the redetermination of a deficiency in income and excess profits taxes of $45,293.85 for the year 1921 and deficiencies in income tax of $4,692.89 and $4,684.91 for the years 1922 and 1923, respectively.

The issues presented by the pleadings and by amendment thereto at the hearing are (1) whether

the respondent erred in eliminating $974,995 from invested capital of the corporation for 1921, being the excess of the par value of the stock, $999,995, issued in January, 1911, for an option to purchase, over ran amount of $25,000 which certain individuals had previously paid for said option, which option enabled it to purchase over 30,000 acres of prospective oil land at an average price of approximately $33 per acre. Or, stated differently, he erred [13] in failing to permit this option (tangible property) to be included in invested capital in an amount not less than the par value of the capital stock issued for it, the actual cash value of the asset at that time being not less than the par value of the stock so issued; and (2) that he erred in his refusal or failure to allow petitioner a paid-in surplus in accordance with Section 326 of the Revenue Act of 1921 in that the asset, i. e., the option, paid in for stock, had an actual cash value at the time paid in clearly and substantially in excess of the par value of said stock in the amount of $671,806.40.

FINDINGS OF FACT.

The petitioner is a corporation, organized and incorporated under the laws of the State of California on January 25, 1911, and has its principal place of business in Los Angeles, California.

In 1910 and 1911 one W. J. Hole was engaged in the capacity of resident sales agent, in Los Angeles, for the Stearns Rancho Company, which, in the beginning, owned, and was engaged in the

sale of approximately 300,000 acres of land in southern California. That company was composed of Edward and Emily B. Hopkins of New York, the latter owning a 55 per cent interest therein, and its principal office was located in San Francisco. Mrs. Hopkins, now deceased, who was about 55 years of age at the time, was represented in California by C. A. Grove, the said Stearns Rancho Company, and finally by one William Hill. She left the management of her lands to her agents. [14]

Hole also purchased and sold relatively large tracts of property from time to time on his own account, such purchases being accomplished by means of down payments, or, as was his usual practice in 1910 and 1911, through the medium of options for stated periods of time.

The said Emily Hopkins also owned 30,845.96 acres of land, in an unbroken parcel, situated in Townships 27 and 28 South, Ranges 20 and 21 East, Kern County, California, between McKittrick and Lost Hills, with which said Hole had been familiar for six or eight years prior to 1910. Hole, who had been very successful as agent for the Stearns Rancho Company, had been promised by a representative of Mrs. Hopkins that if this tract of land should be offered for sale, he, Hole, would be given first consideration in its purchase. Hole, having been informed that others were seeking an option to purchase said land and having been advised to act promptly in the premises if he cared to secure such an option, procured in 1910 a written

option from the owner for a period of one year for a nominal sum of $1 "and other valuable considerations," to purchase the said tract of 30,845.96 acres for $20 an acre. Hole was induced to acquire the said option because he then considered the land to be splendid for agricultural purposes and he also thought there were good prospects for oil on some of the land, inasmuch as there were oil fields on both sides; however, of this he had no tangible proof.

One William Van Slyke, who had been engaged in the oil business as a driller's helper, a driller, and as a superintendent of drillers, and in prospecting for others on his own account since 1894, was [15] acquainted with the acreage here in question in 1910. In that year he first entered upon the property for the purpose of locating boundary stakes and noticed that there was oil structure and he also found oil sands. He returned to the properties again in the same year for the purpose of prospecting for oil signs on the surface and he dug a surface trench and extracted samples of the underlying formation which he tested with chloroform and afterwards had others perform tests of such samples for him. On the various trips that he made between June and December of 1910 he dug a 14-foot hole and discovered what is commonly called black oil sand. He found that the overlying formation was of white chalk-like substance and lower down it was shale and dried out oil sand. He also found live oil sands. As the hole was deepened

the same became richer—it was very black. The odor of oil could be detected in the sands. Van Slyke then covered the hole with planks and dirt and brush so that his discovery might not be detected and he endeavored to acquire some of the land. For oil purposes this tract of land was virgin territory on January 5, 1911, other than as disclosed by Van Slyke's discovery.

After his discovery Van Slyke told Max Whittier, now deceased, about the outcroppings and the live oil sands he had found and about the shaft he had dug. Whittier, among other things, advised him to observe strict secrecy and that he, Whittier, would attempt to acquire some of the land. Whittier also visited the property with him at some time in or about December, 1910. [16]

Hole, having secured said option, endeavored to interest others in the project, but was unsuccessful until he finally interviewed Whittier, who was a recognized expert in oil matters. Whittier was reluctant at first, but, upon being informed of the location of the tract, of the fact that there were nearly 31,000 acres involved and that he, Hole, controlled the purchase of the land, he announced that he would go into the project.

Whittier, at some time thereafter, called upon Burton E. Green, an oil operator of wide experience since 1895, who had already heard of this tract of land, and told Green of his interview with Hole and of Hole's option interest in the property. He also told him of Van Slyke's discovery and

that he would like to interest him in the project. Green, in company with Van Slyke and Whittier, visited the property at some time prior to January, 1911, and saw the oil croppings reported by Van Slyke and the trench that had been dug. He also noted the similarity of the oil croppings there to those in the Lost Hills fields in the northeast. They were very careful not to divulge their discovery to anyone, except M. J. Connell and Frank Buck, who were invited to and did become original stockholders in the corporation when it was organized as hereinafter set forth.

Whittier accompanied Hole to Green's office and after discussion of the number of acres involved and of Hole's option, Hole offered to dispose of the property to them for $33-1/3 an acre, he to retain, however, one-fifth interest in the company to be later formed. Van Slyke's [17] discovery had not been disclosed to Hole, in fact it was not made known until some time after the corporation was organized. Nor had the fact that Hole's option provided for the purchase of the property at $20 an acre been made known until after the transaction was consummated. Green told Hole that if the option could be properly revamped to suit their requirements he would go into the matter and take it over.

Negotiations were then instituted by Green personally toward arranging a suitable option, which was finally consummated after about three or four months' delay and considerable difficulty, neces-

sitating the employment of others and finally entailing the expenditure of $125,000 to a nephew of Mrs. Hopkins, one Benedict, and $35,000 cash and one-fourth of Hole's stock in the company to William Hill, agent of Mrs. Hopkins. What particularly concerned Green was the insertion of a clause therein whereby at least two wells, and as many more as they elected to drill, might be drilled within a year before being required to exercise the option.

Under date of January 5, 1911, Emily B. Hopkins, as the first party, and W. J. Hole, as the second party, entered into an agreement, the recited consideration therefor being their mutual covenants and the nominal sum of $1, providing for the payment by Hole of $25,000 "for the [18] right or option to purchase" the land described therein with particularity, which said sum was actually advanced and paid by Green pursuant to agreement, "subject to pipe line, telegraph and telephone rights to Producers Transportation Company, and Associated Pipe Line Company, and a lease to Miller and Lux for one year from January 1, 1911, for grazing purposes and all such rights of way for pipe lines, telephone and telegraph lines or other rights as may have been heretofore granted or conveyed by said party of the first part." In the event of the exercise of the option before the expiration of one year from January 1, 1911, it was provided that the said sum of $25,000 should be applied to the purchase price of the land, being $33.33 per acre, or a

total sum of $1,028,198.67, payable as therein provided. It was provided that Hole should drill "four proper and suitable wells for the discovery of oil and gas" on the property, two of which were to be commenced as soon after the date of such option as equipment could be obtained and installed and water provided therefor, and two more within sixty days after such completion or abandonment of said first two wells, using the same drilling equipment as used on the first two wells, he being privileged thereby to drill as many more wells within the time specified for drilling the said four wells as he should elect. In the event that the first two wells should prove to be "dry" and the latter two, or either of them, should not have been completed by January 1, 1912, the option to purchase was automatically extended "until the expiration of thirty days after the finding of oil or gas in the said last two wells and completion of same, or the abandonment of work on the same." These [19] were the provisions insisted upon by Green and Whittier and they had stated that they would not proceed with the transaction without them. While the option was negotiated in Hole's name, it was with the contractual understanding that it be turned over to Green upon consummation, he having agreed to furnish the $25,000 consideration therefor.

The aforesaid option was duly assigned to the petitioner by Hole on January 25, 1911, in consideration of the payment of $10 and other valuable consideration.

The petitioner was incorporated on January 25, 1911, for the purpose of acquiring the said interest covered by the option aforesaid existing between Hole and Emily B. Hopkins. The matter of incorporating the company was entrusted to one Sutton, who had been instructed by Green to proceed secretly, and in order that others should not be apprised of the purpose of its incorporation five clerks were used as the original incorporators. This was because the mention of either Green or Whittier would have aroused suspicions.

The petitioner held its first meeting of the board of directors on the date of its incorporation, at which a communication from Hole was submitted setting forth the fact that he held the aforesaid option of January 5, 1911, between himself and the said Emily B. Hopkins and agreeing to transfer it to the corporation in consideration of the issuance to him of the 999,995 shares of its stock, whereupon it was resolved that the said proposition of Hole be accepted in consideration of the issuance of such shares, and the initial issuance of stock, 1,000,000 shares, $1 par value, was made on January 26, 1911, as follows: [20]

Certificate No.		Number of Shares
1.	A. G. Peasley	1
2.	H. L. Westbrook	1
3.	G. C. Braniger	1
4.	W. G. Lackey	1
5.	T. McC. Todd	1
6.	W. J. Hole	999,995

Certificates numbered 1, 3, 4 and 5 were transferred to Green, Connell, Whittier and Buck, respectively, and certificate numbered 6, in the name of Hole, was divided, pursuant to prior understanding of the parties, between Hole and said Green, Connell, Whittier, and Buck, and 25,000 shares in trust for one Henderson, and such transfers and division were recorded in the books of the petitioner on February 1, 1911. Henderson was the proposed general manager of the company.

According to the "logs" of the first and second wells, begun on March 11 and March 18, 1911, respectively, and completed on April 21, 1911, and April 7, 1911, respectively, oil sand was first struck at between 445 and 480 feet and it produced 100 barrels of oil per day, 25.3 degrees Baumé, thirty days after completion, and oil sand was struck in the second well at between 350 and 360 feet and it produced 100 barrels per day, 26.5 degrees Baumé, thirty days after completion.

The respondent has excluded from the petitioner's invested capital for 1921 "Stock discount $974,-995" representing that portion of the par value of capital stock, $999,995, issued in 1911 for the option upon the Hopkins property, in excess of the $25,000 originally paid therefor by Hole and his associates. [21]

OPINION.

MORRIS: While the respondent's deficiency notice covers deficiencies for the years 1921 to 1923,

inclusive, and while the petition states that the taxes "in controversy are income and profits taxes for the years 1921 to 1923, inclusive," the said petition, as amended, fails to allege error on the part of the respondent in other than the year 1921, and, since the evidence adduced at the hearing was confined to the issues pertaining exclusively to the year 1921, the respondent's motion, made at the hearing, to affirm his determination of the deficiencies for 1922 and 1923 is granted.

Our sole question for determination is the "actual cash value" of the option "at the time of" its payment for the capital stock of the petitioner on January 25, 1911. (Section 326 of the Revenue Act of 1921.) It is conceded by counsel for the respondent that if the value of the option is satisfactorily substantiated there is no question about its inclusion in invested capital to the extent justified by the proof.

The identical question here, affecting this same option, was presented to this Board for consideration in Belridge Oil Company, 11 B. T. A. 127, involving the years just preceding 1921, and we there sustained the respondent in his determination "that the option was worth on January 25, 1911, only what was paid for it on January 5 of the same year," i. e., $25,000. We concur in the views urged by the petitioner that the decision there, based upon the facts adduced at that time, which facts are not before us here, is not res adjudicata (Union Metal Manufacturing Company, 4 B. T. A. 287), but,

since the same property, the same issues, and the same [22] principles with respect thereto are involved here, a brief review of that case may prove helpful.

Premising its consideration of the question there presented, by directing attention to the terms of the option itself and to the fact that it was the result of negotiations between parties dealing at arm's length, that they were dealing with prospective oil lands, that by their agreement they provided for their exploration, that they fixed $25,000 as the actual cash cost of the option, the Board said:

> In our opinion, under the circumstances of this case, this agreement is entitled to great weight. It was executed in the light of such knowledge as the parties possessed about the character and value of the land. It does not appear that the parties were unadvised of any of the elements of its value, nor does it appear that any new proof of value was discovered between the giving of the option and its assignment to petitioner. The fact that one Van Slyke some time in 1910 discovered an outcrop of oil sand on the property is not shown to be controlling. This discovery preceded the giving of the option to Hole and for aught that appears the existence of this outcrop may have been known to Hole when he acquired the option. The evidence does not indicate that at the time of the assignment petitioner had any greater knowledge of the oil-bearing prop-

> erties of the land than had Hole when he took the option. When petitioner acquired the option the land was still unproven. No wells had been completed nor had the presence of oil in commercially profitable quantities been otherwise proven.

With the exception of the statement there made indicating the probability that Hole may have had knowledge of the existence of the outcroppings on this tract of land when he acquired the option, the same controlling principles discussed there obtain with equal force here. [23]

While it appears that Hole was acting for the interests of all concerned, it cannot be overlooked that he actually consummated the option with Mrs. Hopkins, and that he was in possession of no more nor less favorable information than Mrs. Hopkins, therefore, it must be concluded that the transaction here, as found in the former decision, was at arm's length and that the cash consideration therefor was arrived at based upon all of the factors then known to them. There was, so far as we are informed, no deception practiced between the parties who consummated the deal. Granting that Hole and Mrs. Hopkins were totally ignorant of the information in the possession of Green, Whittier and Van Slyke (although the record does not show and we have no way of knowing that Mrs. Hopkins was not in possession of such facts, or facts equally as valuable), Hole knew, and so did Mrs. Hopkins know, the strategic location of, and the fact that the land

contained prospective oil, and that was all that anyone knew with any degree of certainty. She could also reasonably infer that these men had informed themselves about the matter, and she may reasonably have suspected, and no doubt did, that they possessed valuable information about the land, otherwise they would not have been so willing and anxious, in fact, to venture $25,000 in the satisfaction of a mere empty curiosity. And it is not as though she, being an untrained woman in such matters, had been misled, because the entire transaction, as the record discloses, was supervised and consummated by her personal counsel and representatives, who must be presumed to have taken proper precautions to protect her interests. [24]

Let us review the evidence in support of the value contended for by the petitioner.

The record shows that the Associated Oil Company acquired acreage in Kern County, California, in 1910 at a cost to it of $66-2/3 per acre. The petitioner contends that that property was not as favorably located as the property in question. In fact one of its witnesses so testified and attempted to give his reasons therefor, which are far from convincing. The witness testified that for the reason stated that property was less valuable than the petitioner's tract. While we are reasonably convinced that the properties were similar in many respects, being in the same general locality, we are not convinced that they were less favorably located in respect to production than the petitioner's properties.

As we read the map before us, two of the tracts, there being five in all, were almost if not adjacent to the Lost Hills properties and within what appears to us to be a very short distance of producing wells. The other three tracts, as we locate them on the map, are as near, [25] if not nearer, to the Lost Hills territory, then a producing field, than the petitioner's tract. But our principal difficulty with this evidence lies in the fact that we do not know from the record what the state of development was with respect to this tract of land, whether or not oil had been discovered thereon at the time of its purchase at $66-2/3 an acre or whether it was virgin soil, and, therefore, comparable to the petitioner's tract. The evidence is very unsatisfactory respecting this purchase and consequently we are able to give it but very little weight in determining the "actual cash value" of the option in question.

Nor do we attach serious importance to the testimony of Green ad Connell respecting his and Whittier's purported offer of $500,000 for one-fifth of the capital stock of the petitioner which Connell owned, for the reason, among others, that as we view the testimony, the transaction had not sufficiently crystallized to be regarded as more than a trifling indication of value. Connell testified that he inquired of the members of the board of directors as to the methods to be employed in the development of the properties,—if they were to be extravagant—and he stated that if they were to be he might be compelled to sell his interest. Where-

upon Whittier inquired what he would take therefor but Connell made no reply. It was then that the purported offer was made, to which Connell testified "I changed the conversation and discussed the question of sale no further."

We have the testimony of Green, who qualified as an expert through his long and intimate association with the oil business, and Harry R. [26] Johnson, who qualified as an expert through his educational training in geology and his long experience in geological survey work, and, particularly his knowledge in the general region in question, and W. W. Orcutt, who also qualified as an expert through his educational training in geology and his later experience in the oil business.

Green testified that, in his opinion, the "actual cash" or "fair market value" of the land on January 25, 1911, was $100 an acre, based upon sales in the Lost Hills territory—with which the record shows he had no familiarity other than pure hearsay—and upon what he considered that other companies would have been willing to pay for the land had they possessed the information which he and his associates did.

Johnson, who visited the properties in question about two weeks before the hearing, apparently for the purpose of qualifying himself as a witness with respect thereto, was asked:

> Now, as a competent geologist, as a person who advised people in 1910, and in the second

> place taking into account and assuming the location of the structures reported by Mr. Van Slyke, and what in your opinion would a person have been authorized to pay, a person who is a willing purchaser and not compelled to purchase, to a willing seller, not compelled to sell, on January 25, 1911, a person being in possession of the information in possession of which Mr. Green and Mr. Whittier and Mr. Van Slyke were——

and he replied:

> Very close to three million dollars—two million nine hundred and some odd thousand.

He said that his opinion as to the value of said land was based upon his scientific education as a geologist, and years of experience plus several years in this region, which, at that time "was very active in [27] the transfer of properties." He did not, however, attempt to enlarge upon his knowledge of such transfers of property about which he spoke.

Orcutt, who visited the property about a week before the hearing, merely corroborated the general testimony of Johnson and testified, in reply to a hypothetical question somewhat similar to that put to Johnson, that, in his opinion, the fair market value of the land in 1911 was $2,700,000, based, as he said, upon the similarity of the outcroppings and structure of this property to that of Lost Hills and other fields and upon his scientific education in geology and his experience in the profession.

None of these witnesses testified to the actual cash value of the option itself, nor did they testify to any cases where similar options had been sold. In fact they demonstrated no knowledge on the subject of options.

The petitioner proposes that we accept the value of $2,700,000 placed upon the land by Orcutt, and it contends that the "actual cash value" of the option on January 25, 1911, when it was transferred to it, was the difference between that figure and the purchase price, $1,028,198.67, to be paid for the land in the event of the exercise of the option, or an actual cash value of the option itself of $1,671,801.33.

Assuming generally the correctness of the theory urged by the petitioner, we are confronted with this situation: an "actual cash" payment for the option in January, 1911, of $25,000, which the petitioner would have us supplant by a purely theoretical value, measured by the [28] value of the land, based upon opinion testimony supplied about twenty years after consummation of the transaction. Of course there are occasions where no actual cash is involved in the transaction, necessitating a substitute for tax purposes, but that is not the case here. It seems to us that if the theory urged by the petitioner, that is, of assigning a value to the option equal to the difference between the theoretical value of the land and the proposed purchase price thereof as set forth in the option, has any place in such

determinations of value at all, it should and necessarily must be confined to those cases in which no, or only a very nominal, consideration was given for the option and not where, as here, a very substantial price was paid, to-wit $25,000, and which appears to be the real cash value thereof at the time of the transaction.

Naturally, when property is purchased at a stated time for $25,000 and it is contended, twenty years later, that that same property would have sold for the huge sum of $1,671,801.33 cash at that time, the human mind becomes skeptical and requires considerably more than ordinary proof. Now all that we have, of any tangible importance, is opinion evidence of one man who was a party to the transaction and the testimony of two experts who visited the property just a few days before the hearing in order that they might visualize, and confirm if possible, conditions as they were supposed to exist thereon in 1911. It is because of the extremely flexible nature of opinion testimony that such should be carefully weighed. These witnesses testify unqualifiedly to the respective [29] values which we have referred to before and they did so primarily, if not entirely, from their geological observations. Witness Johnson testified that in this region all geology was on the surface. As we understand this, it may be reasonably inferred that any geologist might visit this particular piece of property and determine from surface formations that the property contained oil. If the matter was

so obvious to the trained expert, we are unable to understand why others who had already explored this field were unable to discover the presence of oil, for, as Green himself testified, other companies had scouts over the property, but had never discovered any indications of oil.

There is still another important factor which influences our conclusion and that is that Mrs. Hopkins had agreed to sell the entire tract of land, after the discovery of oil thereon, for $1,028,198.67, which figure was fixed with the most optimistic outlook that could possibly attend the development of the land, and consequently represents what the parties regarded the fair market value of the tract of land to be as a producing oil field, therefore, we cannot minimize this factor when the parties urge us to place a value on the option itself, in 1911, prior to the actual discovery of oil, of $1,671,801.33, or nearly $700,000 more for the option than the vendor was perfectly willing to sell the land for as, if and when it should become a producing oil field.

Then, too, the testimony of these experts is retrospective in its nature, a factor which must be considered in weighing the evidence. A somewhat analogous situation was presented in Thomas H. Tracy et al., 15 B. T. A. 1107, where the petitioner introduced various real estate [30] men to testify to the March 1, 1913, value of certain realty. With respect to their testimony the Board premised its considerations by saying, "None of these witnesses

had actually made an appraisal of the Manhattan property in 1913, but were expressing their opinion at the present time of what the value of the property was in 1913," which is true here, and, continued the Board, "This testimony, then, is retrospective in its nature and is subject to the weaknesses of that type of appraisal." Upon rejection by the Board of the values testified to there the matter was reviewed by the Circuit Court of Appeals in Thomas H. Tracy v. Commissioner, ... Fed. (2d) ..... It was there contended that the only evidence of value introduced before the Board being opinion evidence of experts, the Board was under obligation to accept the petitioner's valuation, and the court said:

> * * * While the opinions of experts are competent and often very helpful, such evidence is not considered binding upon the tribunal before which it is produced, at least not to the extent that such tribunal is bound to follow it if contrary to the best judgment of its members. Anchor Co. v. Commissioner, 42 F. (2d) 99 (C. C. A. 4); Am-Plus Storage Battery Co. v. Commissioner, 35 F. (2d) 167 (C. C. A. 7). But it is true that no administrative board may act arbitrarily and without evidence, and this suggests other questions which here arise, viz., whether there was substantial evidence before the Board to support its findings and, if so, the effect to be given to this fact.

See also Uncasville Mfg. Co. v. Commissioner, 55 Fed. (2d) 893.

In reaching the conclusion which we deem inescapable we do not do so arbitrarily, nor have we substituted our own "knowledge, experience and judgment" for the opinions of these experts. There are two bases [31] of valuation of record, not merely the one which the petitioner would have us accept, and after carefully weighing all considerations pertaining to each of them the result is that we are forced to reject the valuations tendered by these experts and to adopt the other. In other words, we are not convinced from the evidence that the theoretical "actual cash value" should be substituted for the value as measured by "actual cash." Compare Van Kannel Revolving Door Co., 11 B. T. A. 1209, affirmed at 36 Fed. (2d) 1022, and Keystone Wood Products Co., 19 B. T. A. 1116.

Reviewed by the Board.

Judgment will be entered for the respondent.

McMAHON dissents; dissenting opinion to be filed later. [32]

McMAHON, dissenting: I do not agree with the majority opinion in holding that the option for the sale of the Hopkins land (sometimes referred to as the Belridge property in the record) in fee simple, under the favorable conditions to the purchaser giving him at least one year in which to exercise the option at so favorable a price as $33-1/3 per acre, had an actual cash value of only $25,000 at the time such option was paid in to petitioner for stock.

Since I presided at the hearing in this proceeding and had an opportunity to see the witnesses upon the witness stand, all of whom were called by the petitioner, and observe the candor, earnestness, sincerity and intelligence with which they testified, I feel that I would be derelict in my duty if I did not make known my views fully.

The valuation of $25,000 placed upon the option in the majority opinion is based primarily upon the fact that such option, which was entered into on January 5, 1911, provides for the payment by Hole of $25,000 and that this was the amount furnished by Green and paid by Hole for it. An essential question for determination here is whether that transaction establishes the actual cash value of the option, notwithstanding the infirmities of the transaction and the rather voluminous evidence in the record to the contrary.

The proceedings of the Board and its Divisions are conducted in accordance with the rules of evidence applicable in courts of equity of the District of Columbia. (Sec. 907(a) of the Revenue Act of 1924, as amended by Sec. 601 of the Revenue Act of 1928.) It has been held by the courts of the District of Columbia that evidence of a "fair sale" of the same property, when not too remote from the date of valuation (the element of remoteness is not in question here), may outweigh expert opinion evidence, standing alone, upon the subject of value; and no presumption or prima facie showing of the correctness of the value fixed by the sale arises

unless the sale is a "judicial" or "fair public" sale. Andrews v. Commissioner, 38 Fed. (2d) 55; affirming Estate of Effie Andrews, 13 B. T. A. 651; Hazelton v. Le Duc, 10 App. D. C. 379; and Ruppert v. McArdle, 42 App. D. C. 392. Since there was no "judicial" or "fair public" sale effected in the instant proceeding, no such presumption arises and no such prima facie showing has been made. On the other hand, the sale of the option, relied upon by the majority opinion (as appears therefrom) as a basis for valuation in this proceeding, was not a "fair sale," as will be pointed out presently, and hence it can not be permitted, under any rule established by these cases, to outweigh expert opinion evidence upon the subject of value, standing alone, or otherwise. Furthermore, the expert opinion evidence upon the subject of value in the instant proceeding, does not stand alone. On [33] the contrary, it is well corroborated and fortified by other undisputed facts and circumstances, many of which are inherent in the situation, as will likewise be pointed out.

In passing it may be said that no authority has been found to support the view that the value fixed in any sale made at or near the date of valuation is conclusive of the value of the property in question at such date as against all evidence or as against expert opinion evidence, standing alone, or that it is the best evidence in the sense that no other evidence will be used as a basis for determining such value. This view, if enforced in any case,

might give rise to the question as to whether it would be in violation of the Fifth Amendment to the Federal Constitution in so far as it guarantees due process of law. Cf. Heiner v. Donnan, 285 U. S. 312; Schlessinger v. Wisconsin, 270 U. S. 230; United States v. Lee, 106 U. S. 196; and Zeigler v. South & North Ala. R. R. Co., 58 Ala. 594.

With regard to the establishing of fair market value, the following appears in Andrew B. C. Dohrmann, 19 B. T. A. 507:

> We think it is well settled that whether property at a given date has a fair market value or not is a question of fact to be determined from all of the evidence introduced and admitted in each individual case; that no set rule or formula can be employed; and that in weighing and sifting the evidence the fact to be found, if it exists, is the cash price at which a seller willing but not compelled to sell and a buyer willing but not compelled to buy, both having reasonable knowledge of all the material circumstances, will trade. Walter v. Duffy, 287 Fed. 41; Phillips v. United States, 12 Fed. (2d) 598; Heiner v. Crosby, 24 Fed. (2d) 191; O'Meara v. Commissioner, supra; Ault & Wilborg Co., supra; and James Couzens, 11 B. T. A. 1040.

This applies with equal, if not greater, force to the instant proceeding, which involves the determination of actual cash value.

Looking to substance and not mere form, it appears that Hole, in negotiating for the second option, was in reality acting in behalf of the group composed of himself, Green, Whittier, Connell and Buck. Green furnished the $25,000 for Hole to pay for the option. Thus in the negotiations for the option the real parties were the group, on the one hand, and Mrs. Hopkins, on the other. Green and Whittier, the two moving spirits, had actual knowledge of the presence of oil sands on the land, whereas the inference to be drawn from the evidence is that Mrs. Hopkins did not have such knowledge. The evidence shows that Green and Whittier were very careful to keep their knowledge secret; and even Hole did not have such knowledge.

In the majority opinion it is stated that "the entire transaction, as the record discloses, was supervised and consummated by her personal counsel and representatives, who must be presumed to have taken proper precaution to protect her interests." Any such presumption [34] that might be indulged in in the ordinary case can not apply here in the face of the evidence, which shows that Hole paid one Benedict, a nephew of Mrs. Hopkins, $125,000 for his services and influence in negotiating this option; that Hole also enlisted similar services and influence of William Hill, Mrs. Hopkins' manager, for which he paid Hill $35,000 and agreed to give him *one-fourth of the stock* which he (Hole) was to receive in the corporation to be organized; and that Mrs. Hopkins' attorney was "anxious" for

Mrs. Hopkins' nephew to "make something." The option was not signed by Mrs. Hopkins, but was signed on her behalf by her counsel as attorney in fact. This option called for a price for the land of $33-1/3 per acre, whereas the first option which Mrs. Hopkins had granted to Hole called for a price of $20 per acre for the land. It was understood by Mrs. Hopkins' attorney that the difference of $13-1/3 per acre to be paid under such option should go to Hole, and that Mrs. Hopkins would only get $20 per acre for the land if the option were exercised. The evidence definitely shows that Mrs. Hopkins did not have intimate management of the property. The inferences to be drawn from this situation are that Mrs. Hopkins did not know of the price of $33-1/3 per acre provided in the option, or that Hole was to receive the difference of $13-1/3 per acre. The evidence does not disclose that Hill, Benedict, or Mrs. Hopkins' attorney knew of the discovery of oil sands on the property; but, even if they did, it is apparent that they would not have advised Mrs. Hopkins of the fact, for the reason that they were all personally interested, for one reason or another, in seeing the option granted to Hole. In so far as Mrs. Hopkins and Hole dealt for an option covering the land in question, the actual cash value of the option is not reflected for the reason that neither of them had knowledge of the existence of the numerous indications that this was oil land. Hole's principal experience had been in agricultural land and he was not an experienced

oil man like Green and Whittier. In so far as Hole dealt in reference to this option with Green and Whittier or with the petitioner, the actual cash value is not reflected, for the reason that Hole did not have this knowledge of the existence of these indications of oil upon the land. Furthermore, Mrs. Hopkins and her representatives, on the one part, and Hole, on the other part, were not dealing as strangers or at arm's length. They were dealing at close range. If a sale is made under peculiar circumstances, and we have such here, it does not establish market value. See Weed v. Lyons Petroleum Co., 294 Fed. 725, at page 734. The facts and circumstances and the infirmities pointed out above take the sale out of the category of a "fair sale" for the purpose of establishing actual cash value of the option, and also fail to satisfy the requirements pointed out in Andrews B. C. Dohrmann, supra, to the effect, among [35] others, that both parties to a trade must have reasonable knowledge of all the material circumstances.

It should be pointed out, however, that the petitioner was not a party to this deal with Mrs. Hopkins. Petitioner was not in existence then. Furthermore, no question is raised here as to the legality of the transaction. Mrs. Hopkins and those in privity with her are the only parties who might successfully raise questions as to the validity of that transaction. See Taplin v. Commissioner, 41 Fed. (2d) 454. They are not before us. The only

question before us is that of the actual cash value of the option.

Hole was willing to pay a great deal more than $25,000 to procure the option, and he did in fact pay, besides the $25,000 furnished by Green, $160,000 in cash and transferred one-fourth of the stock which he received in the petitioner corporation, or a total of more than $185,000. The very fact that Hole actually did pay out a total of at least $185,000 to procure this option leads to the inescapable inference that the option had a value far in excess of $25,000. The actual cost of procuring the option is at least $185,000. In addition to this $185,000, Hole was required to deliver to Hill one-fourth of Hole's share of petitioner's corporate stock. Hole thus paid over $185,000 to procure the option, notwithstanding that he did not know that Van Slyke had discovered outcroppings of oil on the land, which were confirmed by others. It must be inferred from the evidence that, if Hole had known what Van Slyke and others knew in this respect, he would have put a higher value on the option. He testified that if he had known this, he would not have sold the land at $33⅓ per acre.

There is evidence to show that on September 2, 1910, the Associated Oil Company purchased, for $66⅔ per acre, 24,000 acres of prospective oil land located a little closer to the producing Lost Hills oil property than the Hopkins land. That transaction is more convincing upon the question of value before us than the evidence of the sale of the

option with all of the infirmities inherent therein, as pointed out above.

In the majority opinion it is stated in effect that this sale of property to the Associated Oil Company is not entitled to much weight, for the reason that the record does not show its state of development. The map, petitioner's Exhibit 6, demonstrates that none of that property was developed as oil land previous to 1911 and that previous to 1911 there were no indications of oil or gas upon that land. Furthermore, it is established by other evidence that that land had not been proven to be oil land and that it was merely prospective undeveloped oil land, as was the property in question here. Harry R. Johnson, of whom more will be said later, testified that the closest [36] proven oil territory to the property purchased by the Associated Oil Company at that time was a part of the Lost Hills Field. He testified that the land acquired by the Associated Oil Company was not in as good prospective oil territory as the property involved here and was less valuable for oil. The map shows that the Hopkins land was located closer to producing oil lands than was the Associated Oil Company's property. The Hopkins land was near Gould Hill, Temblor Valley, and the McKittrick Field, which were at that time better established oil fields than the producing portion of the Lost Hills area, which was the closest proven oil territory to the land of the Associated Oil Company. The Hopkins land was about three miles north of Gould Hills, about

six miles north of the Temblor Ranch Field and the McKittrick Field, and was not more than eight miles south of the producing area of Lost Hills.

There is also convincing expert testimony in the instant proceeding which establishes an actual cash value for the option greatly in excess of $25,000. The expert witnesses were Burton E. Green, Harry R. Johnson, and W. W. Orcutt.

Green went into the oil business in 1895 and, at various times, operated in the northeastern part of the Los Angeles Field, in the Coalinga Field, and in the McKittrick Field, and was instrumental in the organization of several oil companies including the Green-Whittier Oil Company, the Associated Oil Company, the Amalgamated Oil Company, the West Coast Oil Company, and the Inca Oil Company. He was familiar with the developments that had taken place in the Midway Oil Field and the Lost Hills section, and he had developed the McKittrick Field. At the hearing Green testified that the outcroppings of oil on the Hopkins land were quite similar to those in the Lost Hills section. He testified that all the outcroppings which he had ever approved resulted in the development of oil fields, including the Coalinga Field, McKittrick Field, the Kern River Field, the La Habra Field, and the Wolfskill property. He testified that the fair market, or actual cash, value at January 25, 1911, of the Hopkins land was at least $100 per acre, that he would have paid $100 per acre for it, and that he was in financial condition to do so. He

further testified that if other companies had known the facts which he and Whittier knew about the property he and Whittier would not have been able to obtain the land for $100 per acre. He stated that the Lost Hills territory had been under development for about a year before the petitioner obtained the option and that land in that section had sold for as high as $100 per acre. These sales had taken place after oil croppings had been exposed and a shallow hole had been drilled. The land sold was located some distance from this shallow hole and in a portion of the Lost Hills area which was not as favorable for oil. [37]

Johnson is a consulting petroleum geologist. He graduated from Leland Stanford University about 1905 or 1906. Thereafter, he reentered the United States Geological Survey, with which he had been associated even before he entered college, and in 1908 did extensive work in examining the geologic structure of the general region in which the property in question is located, and in compiling Government bulletins in connection therewith. In 1911 he personally became informed of the conditions of the Hopkins land as found in 1910 by Van Slyke. He visited the property with Van Slyke shortly before the hearing in this proceeding and verified all material conditions found by Van Slyke in 1910, which were substantially the same as they were shortly before the hearing. These material conditions of 1910 were likewise verified shortly before the hearing by W. W. Orcutt, of whom more will

appear later. After his resignation from the United States Geological Survey in 1909, Johnson went into private business in Los Angeles. Such business consisted of examining and valuing oil areas and advising clients as to prices to be paid for prospective oil lands. At the hearing he testified that Van Slyke's findings of oil indications in 1910 should have caused a practical oil man like Van Slyke to reach the natural and almost inevitable conclusion that the Hopkins land was valuable oil land, that a person having the knowledge of the Hopkins land which Green and Whittier had in 1910 would have been justified in paying approximately $2,900,000 for it, and that he would have advised clients to purchase the property under those conditions at that price. He testified that that was its fair market value as of January 25, 1911, prior to any actual discovery of oil on the property, beyond that made by Van Slyke.

Orcutt graduated from Leland Stanford University in 1895, with the degree of A. B., after pursuing the study of geology as a major subject. He was thereafter employed by the Union Oil Company to organize their geological department. He was later chief engineer and manager of the geological and land department of that company and still later became vice president. That company at first had a capitalization of about $50,000,000. Later its capitalization was increased to $100,000,000. He leased and purchased oil lands for the Union Oil Company and was so employed in 1910 and 1911.

He testified that if on January 25, 1911, he had known the facts which Green knew about the Hopkins land on that date, and he had been advising his employer, the Union Oil Company, or any other party, what to pay for the property, he would have recommended that they pay $2,700,000. This, he testified, was the fair market value of the property as of that date. His opinion was based in part upon the similarity of the outcroppings and structure of this [38] area with that of the Lost Hills section, the Buena Vista Field and several other oil fields throughout southern and central California.

The opinions of all of these experts as to the value of the Hopkins land were well fortified by reasons and were borne out by the fact that, promptly after petitioner obtained the option in question, producing oil wells were brought in on the land. The logs of the first two wells which were sunk by the petitioner on the Hopkins land were received in evidence for the limited purpose of corroborating the findings of Van Slyke made in 1910, which were confirmed by Green in the same year and by Johnson and Orcutt shortly before the hearing in the proceeding, and for no other purpose. No attempt was made to prove the value of the option in question by showing how many wells were sunk, how much oil was produced by each, and what profits were made by the petitioner. Such evidence would be inadmissible. Green did testify, without objection, that the development of the oil

lands covered by the option in question was successful.

These expert witnesses were intelligent, candid, and well qualified to express opinions as to the value of the land which was the subject of the option, and their testimony shows that it had a value greatly in excess of the price at which it could be purchased under the option. None of them was impeached. Their expert opinions were not met or rebutted by similar proof to the contrary. Their expert opinions stand undisputed in the record. Their expert testimony is in fact corroborated by other competent, credible, persuasive evidence, much of which is inherent in the situation. This expert opinion evidence, together with this other evidence in line with it, should be used together with all of the competent evidence upon the subject in arriving at the actual cash value of the option. There is nothing in the record to outweigh it all. No mere presumption or prima facie showing can stand as against it all. See Montana Ry. Co. v. Warren, 137 U. S. 348, and more particularly the discussion at pages 352 to 354. That case involved the value of mineral lands and sustains the view that expert opinion evidence as to value is peculiarly helpful and looked upon with favor in a situation such as we have here. See also Troxel Mfg. Co., 1 B. T. A. 653; and Bowman Hotel Corporation, 24 B. T. A. 1193, more particularly at page 1210.

Once the value of the land is established, the value of the option can be readily determined. The actual

cash value of an option is the difference between the value of the land and the price at which it can be obtained under the option. Karl von Platen, 10 B. T. A. 250; Realty Sales Co., 10 B. T. A. 1217; Robert Brunton Studios, Inc., 15 B. T. A. 727; and United Studios, Inc., 15 B. T. A. 737. [39]

To the effect that an option is tangible property, see section 325 of the Revenue Act of 1921, Nansemond Brick Corporation, 8 B. T. A. 1117, and Reserve Natural Gas. Co., of Louisiana, 15 B. T. A. 951. It should therefore be included in petitioner's invested capital for the years in question at its actual cash value. (Sec. 326 (a) (2), Revenue Act of 1921.)

The majority opinion also relies upon our decision in Belridge Oil Co., 11 B. T. A. 127, which was a proceeding between the same parties as are here concerned, and wherein it was held that the value of this same option for invested capital purposes for the years 1917 and 1920 was $25,000. While that decision is not res judicata in the instant proceeding, findings of fact in a proceeding before the Board under the Revenue Act of 1924 are prima facie correct in subsequent proceedings before the Board between the same parties, when properly introduced, as they were in the instant proceeding. Union Metal Mfg. Co., 4 B. T. A. 287; Goodell-Pratt Co., 6 B. T. A. 1235; American Steel Co., 7 B. T. A. 641; American Seating Co., 14 B. T. A. 328; affd., Commissioner v. American Seating Co., 50 Fed. (2d) 681 (C. C. A., 7th Cir., June 27, 1931).

However, findings of fact made by the Board in a prior proceeding, being mere prima facie evidence, may be rebutted in a subsequent proceeding between the same parties before the Board. See Charles M. Monroe Stationery Co., 15 B. T. A. 1227, wherein we stated that the decision in Charles M. Monroe Stationery Co., 3 B. T. A. 69, was consistent with the evidence there presented, but that in the proceeding under consideration there was present a different state of evidence.

The evidence introduced by petitioner in this proceeding overcomes the presumption in favor of the correctness of the value found in Belridge Oil Co., 11 B. T. A. 127. In that proceeding there was lacking evidence which appears in the instant proceeding, namely, evidence of the infirmities of the sale of the option, the actual cost of the option of over $185,000, the acquisition by the Associated Oil Company in September, 1910, for $66⅔ per acre, of property in Kern County, California, which was comparable to the land in question, expert testimony upon the question of value, and other evidence which did not appear in the prior proceeding, as herein set forth. The testimony of four witnesses, Hole, Clute, Gillan, and Van Slyke, was offered in the prior proceeding upon the question of the value of the land as oil land. The testimony of two of them, Hole and Clute, was stricken. Gillan expressed his opinion as a layman, and not as an expert. The opinion of Van Slyke, whose testimony shows that he was not qualified to testify as an

expert on value, was received without objection. Thus, in the prior proceed- [40] ing there was no expert opinion evidence of the value of either the land as oil land, or of the option.

In the opinion in the former proceeding in regard to the transaction by which Hole acquired the option, it is stated:

> * * * The fact that one Van Slyke sometime in 1910 discovered an outcrop of oil sand on the property is not shown to be controlling. This discovery preceded the giving of the option to Hole and for aught that appears the existence of this outcrop may have been known to Hole when he acquired the option. The evidence does not indicate that at the time of the assignment petitioner had any greater knowledge of the oil-bearing properties of the land than had Hole when he took the option. * * *

The evidence in the instant proceeding discloses that Hole did not know of the discovery of an outcrop of oil sand on this property. He testified that if he had known what Green and Whittier knew in this respect he would not have parted with his option for the consideration which he received for it. The evidence further shows that at the time of the assignment of the option to the petitioner, the stockholders (and more particularly the moving spirits, Green and Whittier) other than Hole did have greater knowledge of the oil-bearing properties of the land than had Hole when he took the option.

We are not called upon to here reconsider or review the correctness of the Board's decision in Belridge Oil Co., 11 B. T. A. 127, and no criticism of it is being offered. But the proof is radically different in the instant proceeding.

The Board's decision in the former proceeding has been invoked, in the majority opinion, as a precedent for the instant proceeding. As such it has no value, for the reason that it is clearly distinguishable upon the facts, as fully pointed out herein. As a precedent, it is not binding. To hold otherwise would lead to the same result as to hold that the former decision is res judicata. The majority opinion recognizes that it is not. Since this is true, we are in the same position as we would be in if there had been no former proceeding, with the exception of the prima facie showing based on the Board's former finding of the value of the option; and that, as pointed out herein, has been overcome by the proof which appears here and did not appear there.

The only evidence offered by the respondent in the instant proceeding consists of the findings of the Board fixing the value of the option in this former proceeding. In doing this he merely made a prima facie showing, which was rebuttable. His proof accomplished nothing else. A careful examination of the entire record discloses that there is nothing to support the position of the respondent in which he limits the actual cash value of this

option for invested capital purposes to $25,000, except rebuttable presumptions or their [41] equivalent. The first presumption is that his determination in this respect is correct. The second presumption or its equivalent arises from the prima facie showing that was made when he offered the findings of the Board in Belridge Oil Co., 11 B. T. A. 127, as evidence of the value of this option as therein fixed at $25,000 for similar purposes for previous years. A presumption, such as we have here, is not proof, as was stated in Heiner v. Donnan, supra. As stated there, it is merely a substitute for proof and is open to challenge and disproof. A prima facie showing, such as we have here, is not stronger. Both of them have been rebutted, disproved, and overcome. In this situation the burden of proof shifted to the respondent. He has done nothing to discharge his burden in this respect.

Notwithstanding any presumption in favor of the respondent or prima facie showing made for him, the evidence adduced at the hearing establishes a value of the land substantially in excess of the price at which it could be purchased under the option and an actual cash value of the option substantially in excess of $25,000.

Any statements or comments of fact made herein by way of supplement to the findings of fact of the majority of the Board will be found to be supported by evidence which is not disputed.

Obviously, it is not the province of a dissenting opinion to fix another value in excess of $25,000. That is within the province of the majority of the Board. [42]

United States Board of Tax Appeals.

Washington.

Docket No. 31,218

BELRIDGE OIL COMPANY,

Petitioner,

vs.

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

DECISION.

Pursuant to the determination of the Board, as set forth in its report promulgated August 16, 1932, it is

ORDERED and DECIDED: That there are deficiencies as follows:

Year	Deficiency
1921	$45,293.85
1922	4,692.89
1923	4,684.91

Entered Aug. 17, 1932.

[Seal] EUGENE BLACK,

Member. [43]

[Title of Court and Cause.]

PETITION FOR REVIEW TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE NINTH CIRCUIT.

To the Honorable Judges of the United States Circuit Court of Appeals for the Ninth Circuit:

Comes now Belridge Oil Company, a corporation, by its attorneys, Claude I. Parker, John B. Milliken and Llewellyn A. Luce, and respectfully shows:

I.

The petitioner on review (hereinafter referred to as the taxpayer), is a corporation duly organized and existing under and by virtue of the laws of the State of California, with its principal office located at Los Angeles, California. The respondent on review (hereinafter referred to as the Commissioner) is the duly appointed, qualified and acting Commissioner of Internal Revenue of the United States, holding his office by virtue of the laws of the United States. The income tax returns of the taxpayer for the calendar year 1921, being the taxable year [44] involved herein, were filed with the Collector of Internal Revenue for the Sixth District of California, and the office of said Collector is located within the Judicial Circuit of the United States Circuit Court of Appeals for the Ninth Circuit.

II.

The Commissioner determined a deficiency in income and excess profits tax for the calendar year

1921 in the sum of $45,293.85 and on July 18, 1927, in accordance with the provisions of Section 274 of the Revenue Act of 1926, sent to the taxpayer by registered mail a notice of said deficiency. Thereafter the taxpayer filed an appeal from said notice of deficiency with the United States Board of Tax Appeals.

The hearing of said appeal to the United States Board of Tax Appeals was held in Los Angeles, California, on the 22nd day of May, 1930, before Honorable Stephen J. McMahon, Member, presiding. On August 16, 1932, the Board promulgated findings of fact and opinion in said appeal and on August 17, 1932, the Board entered its decision in said appeal wherein and whereby the Board ordered and decided the amount of deficiency against the taxpayer for the calendar year 1921 to be $45,293.85.

III.

The deficiency which was in controversy before the United States Board of Tax Appeals for the year 1921 arose or resulted from the determination of the Commissioner that the invested capital, as claimed by the petitioner for said year 1921, [45] should be reduced by the sum of $974,995.00. In the year 1911, the taxpayer issued its stock in the amount of one million shares, par value one dollar per share, in exchange for an option to purchase certain real estate. In its income and excess profits tax return for said calendar year 1921, the taxpayer

included in its invested capital for tax purposes the par value of the stock issued for the option. The Commissioner refused to permit the taxpayer to include in its invested capital the sum of $1,000,000.00 and allowed and permitted it to include only the sum of $25,005.00 and excluded therefrom the sum of $974,995.00. The Commissioner further determined and held that the actual cash value of said option for which one million shares of stock were issued had an actual cash value on the date taxpayer acquired it of only $25,000.00.

The question at issue is, therefore, what was the actual cash value of the option in 1911 when taxpayer issued its stock in exchange for same. The Commissioner determined the actual cash value to be $25,000.00 and petitioner corporation contends and submits said actual cash value was at least $975,000.00.

IV.

The taxpayer says that in the record and proceeding before the United States Board of Tax Appeals and in the decision and order of redetermination rendered and entered by the United States Board of Tax Appeals, manifest error occurred and intervened to the prejudice of the taxpayer. The taxpayer assigns the following errors, and each of them, which it avers occurred [46] in the said record, proceeding and order of redetermination and upon which it relies to reverse said decision and order of redetermination so rendered and entered by the United States Board of Tax Appeals, to-wit:

(1) The United States Board of Tax Appeals erred in making and entering its decision in this cause and in entering judgment in favor of Commissioner and against taxpayer.

(2) The United States Board of Tax Appeals erred as a matter of law and fact in deciding that the option which taxpayer acquired on January 25, 1911, had only a value, for invested capital purposes, of $25,000.00.

(3) The United States Board of Tax Appeals erred, as a matter of law, in disregarding the competent testimony of qualified witnesses that the option which taxpayer acquired on January 25, 1911, had an actual cash value of at least $1,000,000.00 for invested capital purposes.

(4) The United States Board of Tax Appeals erred in its conclusions of law and its application of the law to the facts.

(5) The United States Board of Tax Appeals erred in that the decision, opinion and order of the Board are contrary to the evidence and are not supported by the evidence.

(6) The United States Board of Tax Appeals [47] erred in redetermining a deficiency against this taxpayer for the year 1921 amounting to $45,293.85.

(7) The United States Board of Tax Appeals erred in that there is neither in the findings of fact by the Board nor in the opinion

by the Board, any findings of fact to sustain the Board's conclusions of law as set forth in the Board's opinion and decision.

(8) The United States Board of Tax Appeals erred in that its conclusions of law stated in its opinion are contrary to and not in harmony with the Board's findings of fact.

(9) The United States Board of Tax Appeals erred in that the opinion and decision of the Board, based upon the Board's findings of fact, are contrary to law.

WHEREFORE, the taxpayer petitions that the decision of the United States Board of Tax Appeals be reviewed by the United States Circuit Court of Appeals for the Ninth Circuit and that a transcript of the record be prepared in accordance with law, and with the rules of said Court, and transmitted to the Clerk of said Court for filing, and that appropriate action be taken to the end that the errors complained of be reviewed and corrected by said Court.

CLAUDE I. PARKER,
JOHN B. MILLIKEN,
808 Bank of America Bldg.,
Los Angeles, California,
LLEWELLYN A. LUCE,
937 Munsey Building,
Washington, D. C.,
Counsel for Taxpayer-Petitioner. [48]

District of Columbia.—ss.

Llewellyn A. Luce, being first duly sworn, says:

That he is attorney of record for the above named taxpayer-petitioner, and as such is duly authorized to verify the above and foregoing petition for review to the United States Circuit Court of Appeals for the Ninth Circuit; that he has read said petition for review and is familiar with the statements therein contained and that the facts therein stated are true, except such facts as may be stated on information, and those facts he believes to be true.

LLEWELLYN A. LUCE.

Subscribed and sworn to before me this 14th day of November, 1932.

[Seal] NEEL V. PRICE,
Notary Public in and for the District of Columbia.

[Endorsed]: Filed November 15, 1932. [49]

[Title of Court and Cause.]

NOTICE.

To Hon. C. M. Charest,
General Counsel, Bureau of Internal Revenue,
Washington, D. C.
Counsel for Respondent on Review.

Notice is hereby given you that Belridge Oil Company, petitioner on review in the above entitled

proceedings, did on the 15th day of November, A. D. 1932, file with the United States Board of Tax Appeals at Washington, D. C., petition for review by the United States Circuit Court of Appeals for the Ninth Circuit of the decision rendered by said Board of Tax Appeals in said proceeding, a copy of which said petition for review is hereby served upon you.

CLAUDE I. PARKER,
JOHN B. MILLIKEN,
808 Bk. of America Bldg.,
Los Angeles, California,
LLEWELLYN A. LUCE,
937 Munsey Bldg., Washington, D. C.
Counsel for Petitioner on Review. [50]

Service of the foregoing notice and of a copy of the petition for review mentioned in said notice is acknowledged this 15th day of November, A. D. 1932.

C. M. CHAREST,
Counsel for Respondent on Review.

[Endorsed]: Filed November 15, 1932. [51]

[Title of Court and Cause.]

STATEMENT OF EVIDENCE.

The following is a statement of evidence, partly in narrative form and partly in verbatim question and answer form, and other proceedings in the above entitled cause.

This cause came on for hearing before the Honorable Stephen J. McMahon, Member of the United States Board of Tax Appeals, on May 22, 1930, at Los Angeles, California. J. B. Milliken, Esq., appeared for the petitioner and R. W. Wilson, Esq., Special Attorney, Bureau of Internal Revenue, appeared for the respondent.

TESTIMONY OF W. J. HOLE, FOR PETITIONER.

W. J. Hole was called as a witness by and on behalf of the petitioner and having been first duly sworn, was examined [52] and testified as follows:

My name is W. J. Hole. I reside at 114 Fremont Place, Los Angeles, and have resided in the State of California for the last thirty-six or thirty-seven years. I am at present a retired business man and during the years 1910 and 1911 I was resident agent in Los Angeles for the Stearns Rancho Company. During the years 1910 and 1911 and prior thereto, I was dealing on a large scale for my own account in real estate. The Stearns Rancho Company owned about 300,000 acres of land in Southern California. The Company was composed of Edward Hopkins and Emily B. Hopkins of New York.

Prior to 1910 and 1911 on my own account I transacted business with respect to purchases on a relatively large scale. It was my business custom in 1910 and 1911 to buy up large parcels of real estate either by outright purchase or to secure options on real estate for the purpose of subsequent sale at a profit.

(Testimony of W. J. Hole.)

The MEMBER.—Did I understand the witness to say that he bought and sold for the Stearns Rancho Company?

Mr. MILLIKEN.—He was agent for the Stearns Rancho Company, which company he testified owned approximately 300,000 acres of land in Southern California and he also acted on his own account, independent of them.

The MEMBER.—Did you buy and sell for the Stearns Rancho Company?

The WITNESS.—No, not buy.

The MEMBER.—You sold for them?

The WITNESS.—Sold for them. [53] In other words, they owned 300,000 acres and I was their agent with respect to the disposition of that property and the sale of it.

For six or seven years prior to 1910 I had been familiar with the property in Kern County, California, owned by Emily B. Hopkins, comprising some 31,000 acres of land. Emily B. Hopkins owned about 55 per cent of the Stearns Rancho Company, she lived in New York and was represented here by Stearns Rancho Company, C. A. Grove and William Hill.

Q. Do you feel, or do you not feel that, by reason of your business relationship with Mrs. Hopkins, that you were able to obtain from her any special business considerations, if it came to a question of getting an option on her property here?

(Testimony of W. J. Hole.)

A. Yes, sir.

Q. Why did you have such belief?

A. Well, I had been very successful with the Stearns Company lands and C. A. Grove had promised me if at any time that land was put up for sale to anyone I was to have first chance at it.

In 1910 Mrs. Hopkins was probably fifty years of age. She resided in New York and did not have intimate management of her property but left such matters to the Stearns Rancho Company. Prior to 1910, I was advised by the secretary of the Stearns Rancho Company that other persons were attempting to obtain an option from Mrs. Hopkins on her property situated in Kern County and that if I desired to obtain an option on the same, I must proceed with dispatch.

I first secured an option from Mrs. Hopkins about May, 1910. It was a written option. I have made repeated efforts to find the option but without success. During 1919 I severed my [54] connections with the Stearns Rancho Company and destroyed many of my old records and I believe the option which I secured from Mrs. Hopkins in 1910 must have been destroyed at that time. I remember the terms of the option obtained in May, 1910. I secured an option on the 31,000 acres of land of Mrs. Hopkins located in Kern County, California—the option was to run for one year and called for the purchase of the land at twenty dol-

(Testimony of W. J. Hole.)

lars per acre. There was no consideration, except friendship, passing between Mrs. Hopkins and myself for the option. Mrs. Hopkins is now dead as is her manager for this property who was William Hill.

I acquired the option from Mrs. Hopkins because I thought the land was good agricultural soil with a possibility of securing from Kern River a water supply and also, because the land lies between McKittrick and Lost Hills, I thought it would present a very good prospect for oil on some of the land. After I secured the option I endeavored to interest others in purchasing the same.

I knew very well one, M. H. Whittier, now dead and that he was recognized as an oil expert. I went to see him, told him of the land in question and its possibilities, advising him that I had an option upon the same. He agreed to look into the matter with a view to taking it over. M. H. Whittier also took me to see Mr. Burton E. Green. They asked me what I would take for the land to be purchased on an option and I told them thirty three and a third dollars an acre, and to retain for myself a one-fifth interest in the company to be organized to take it over. They immediately accepted, did not argue or haggle over the price and it was the quickest deal I ever made.

Mr. Green asked me what the option cost me and I explained that that was no one's business but my own. There were [55] some provisions in the op-

(Testimony of W. J. Hole.)

tion that Green and Whittier did not desire and we proceeded to have the option changed to conform with their demands. I did not represent Green and Whittier in negotiating these changes in the option but represented myself.

I secured an option from Mrs. Hopkins which is dated January 5, 1911, which met with and conformed to their demands.

There was then offered and received in evidence petitioner's exhibit No. 1, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said exhibit 1 is the option dated January 5, 1911, which Hole secured from Mrs. E. B. Hopkins and which he turned over to Whittier and Green.

The MEMBER.—Bakersfield is in Kern County?

The WITNESS.—Yes.

The MEMBER.—How far is this land from Bakersfield?

The WITNESS.—55 or 60 miles.

In the option of January 5, 1911, there is a provision whereby Mrs. Hopkins agreed to let the holders of the option have one year within which to drill four wells on the property and if at the end of one year the four wells had not been completed there could be such extended time within which to exercise the option as the parties might agree upon, and if the option was exercised the price for the purchase of the property should be

(Testimony of W. J. Hole.)

33⅓ dollars per acre. These provisions were insisted upon by Green and Whittier and they stated the deal would not be consummated unless these provisions were inserted in the option. I had a very difficult [56] time in getting Mrs. Hopkins to agree to the terms demanded by Green and Whittier. It was impossible for me to get the option from Mrs. Hopkins unless I reached her through her cousin Benedict, and used his good services. I paid Benedict the sum of $125,000.00, for his assistance in getting Mrs. Hopkins to give the option as requested. I also paid William Hill, who was agent for Mrs. Hopkins in California, the sum of $35,000.00 and agreed to give him one-fourth of my stock in the Belridge Oil Company for his services in helping me to get the option from Mrs. Hopkins.

In all my negotiations with Whittier and Green looking to the securing of the option, the fact was concealed that I had an option for $20.00 an acre and was selling to them for 33⅓ dollars per acre. In fact, I was asked by each of them how much I was to pay for the land, and I informed them that if they insisted upon knowing the terms of my dealings with Mrs. Hopkins that the deal would be called off.

In all my negotiations with Whittier and Green, incident to the securing of the option, I never at any time let them know what I was paying for the option and they never at any time let me know as

(Testimony of W. J. Hole.)

to the reasons why they were so anxious to secure the option on the property.

Mrs. Hopkins was informed of the fact that I stood to make the difference between $20.00, the price called for in her [57] option to me, and 33⅓ dollars, the price called for in the option of January 5, 1911. Her attorney advised me that she was agreeing to the option on account of her cousin, Harry Benedict, and whatever dealings I had with Benedict were satisfactory.

The negotiations incident to securing the option covered a period of three or four months. I did not pay the $25,000.00 stated in the option to Mrs. Hopkins. Burton E. Green paid that sum to Mrs. Hopkins and if the deal had fallen through, the $25,000 in question was to be returned to Burton E. Green.

After the option contract was signed, sealed and delivered, Green and Whittier told me for the first time as to why they accepted the proposition for the purchase of the land at 33⅓ dollars an acre as soon as I made my offer. They informed me that they had theretofore had a party go over the land, found it had splendid signs of oil, had dug pits, treated the soil with ether and that the signs were excellent for an oil country.

Burton E. Green was known to me to be an experienced oil man and was a man of financial responsibility.

Q. How did you feel, if you did feel any way about this matter, after this thing has been

(Testimony of W. J. Hole.)

signed, sealed and delivered and they had told you what they knew about the property?

A. Well, there was two ways to look at it. I was satisfied with what I was making, yet if I had known what they knew they would never have gotten the property for thirty three and a third dollars an acre.

Q. In other words, if you had known what Green and Whittier and others told you they knew from this exploration which they had kept from you, you would never have sold the property for thirty three and a third dollars an acre? [58]

A. No, indeed.

Q. You say you thought it might be oil land when you first acquired the option. Did you have any definite revelations, indications or definite information that led in that direction?

A. Nothing definite, and yet it lay between the Lost Hills and McKittrick. There was oil on both sides of it.

Q. As I understand it as a general proposition you just took a chance. The option did not cost you anything it might develop something?

A. No, it was more than that. I considered the land valuable and I do still; but for oil, I was taking a chance.

Q. Did you know that a person by the name of Van Slyke had ever gone out on that prop-

erty for anyone and made explorations on it before you turned the property over to Whittier and Green?

A. No, I did not.

When the Belridge Oil Company was organized, I received, as agent, all of the stock of the company, but immediately upon receiving it I turned back to my principals, Green and Whittier, four-fifths of the stock.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Mr. WILSON.—I have no questions.

(Witness excused.)

Whereupon the following statement was made by counsel for the petitioner:

Mr. MILLIKEN.—Now, with permission of Government counsel I will endeavor, as a part of my testimony, to show representative sales in this region, with the object obviously in view of showing that this property was acquired at a very advantageous price, much below the prevailing market price for such land, even at thirty-three and a third dollars an acre. In endeavoring to obtain such evidence I have been able to secure the secretary of the Associated Oil Company, a very large oil company [59] at that time, and he is here to testify with respect to the purchase of some 24,000 acres of land which the Associated Oil Company purchased in 1910, the year before the Belridge Oil Company acquired this property.

With that in view, and because of the fact that he must return to San Francisco, I would like to produce him now out of line with the ordinary continuity of my case, in order that he may be able to return.

The MEMBER.—What have you to say to that, Mr. Wilson?

Mr. WILSON.—I have no objection.

The MEMBER.—Then you may proceed, Mr. Milliken.

TESTIMONY OF J. P. EDWARDS, FOR PETITIONER.

J. P. Edwards was called as a witness by and on behalf of the petitioner and having been first duly sworn, was examined and testified as follows:

My name is J. P. Edwards. I reside in San Francisco and am secretary of the Associated Oil Company. As secretary of that company I am custodian of the minutes of the corporation from the beginning, custodian of the corporate records and other documents and papers that are in charge of a secretary. I have secured photostat copies of the minutes of the meeting of the Associated Oil Company of September 6, 1910, which evidence that the Associated Oil Company entered into an agreement with Martin and Dudley in September, 1910, to negotiate for the purchase of some 24,000 acres of land with a general description set forth in the minutes. The copy of the minutes shows that

(Testimony of J. P. Edwards.)

the negotiations referred to therein were consummated and I testify that the transaction was closed on that basis. I also identify the checks of the Associated [60] Oil Company which were issued by the Associated Oil Company in payment of the property referred to in the minutes.

Mr. MILLIKEN.—I offer this in evidence now as petitioner's Exhibit No. 2.

Mr. WILSON.—With the understanding that the petitioner expects to further identify the lands described in the document now offered, and thus lay a foundation for showing similarity of location and type of lands to that with which we are here confronted, the respondent offers no objection to the offer.

Mr. MILLIKEN.—I accept the qualifications of counsel for respondent, and there will be other witnesses to identify the specific property as to its location, type, contour and topography, with the object in view of showing its similarity to the property with which we are now concerned.

The MEMBER.—It may be received as the Petitioner's Exhibit 2 with the understanding set out by counsel.

By Mr. MILLIKEN:

Q. I will ask you if the consideration mentioned in the instrument and in the papers which have been introduced as Petitioner's Exhibit 2 fully and truthfully state the considera-

(Testimony of J. P. Edwards.)

tion which the Associated Oil Company paid for the property described in Exhibit No. 2?

A. I would like to answer that with a little amplification. The Associated Oil Company commissioned Martin & Dudley to purchase this land from the Carlton Investment Company at $50 an acre with the understanding that instead of a cash commission the Associated Oil Company would deed back to Martin & Dudley, as their commission, one-fourth of the land they acquired.

Q. Did the Associated Oil Company do so?

A. They deeded one-fourth of all the land back to Dudley & Martin.

Q. That being so, what consideration did the Associated Oil Company pay for the land in question, described in Exhibit 2?

A. The land stands the Associated Oil Company sixty-six and two-thirds dollars per acre. [61]

The MEMBER.—That is after deductions?

The WITNESS.—After returning one-fourth of the land to Martin & Dudley.

The MEMBER.—That is the net cost to them?

The WITNESS.—That is what it stands them, the net cost.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Mr. WILSON.—I have no questions.

Mr. MILLIKEN.—Can the witness be excused to return to San Francisco?

Mr. WILSON.—The respondent will not call this witness.

(Witness excused.)

TESTIMONY OF WILLIAM G. VAN SLYKE, FOR PETITIONER.

William G. Van Slyke was called as a witness by and on behalf of the petitioner and having been first duly sworn, was examined and testified as follows:

My name is William G. Van Slyke. I reside at the present time at Needles, California. Beginning with the year 1894 and for nearly all of the time since then, I have been engaged in the oil business. I first began as a driller's helper and about 1895 worked as a driller of oil wells. During the period from 1895 to the year 1910 I was engaged either as a driller or as a superintendent of drillers in the Fullerton oil fields, in and around Bakersfield, the Kern River field, the McKittrick field and the Lost Hills field. During a part of the time I was so engaged at these various oil fields, I also made it my business to prospect [62] for oil lands, both for and on my own account as well as for others. In the year 1910, I met one, M. H. Whittier, who was in the oil business and who was a large operator. I knew the Belridge Oil property in 1910

(Testimony of William G. Van Slyke.)

and in 1910 I went over and upon said property. The occasion for first going upon that property was to locate some definite corner stakes along the township lines. Also in the year 1910 I went upon the Belridge Oil property for the purpose of prospecting for oil signs on the surface of the ground. On my first trip to the Belridge property in 1910 I noticed there was what is known as an oil structure and also found oil sands. On my first visit to the property I picked up little, dried-up oil sands that were lying on the surface and on my next trip to the property, I dug holes in the ground, dug part of a trench—a little surface trench and took some samples of the underlying formation and tested them with chloroform and I afterwards caused others to make an oil test of them. I also dug a hole down about fourteen feet deep in the wash and got what is known as black oil sand. It was between June and December of 1910 that I dug a hole down about fourteen feet deep and secured what is known as the black oil sand.

Q. Now what was the general contour of that property as you found it there in 1910?

A. Well, it seemed to be along a ridge, running towards what we would call the strike of it, which would be almost northwest by southeast. The ridge is cut up into rolls so that there is a little low place and then it will be high like that all the way along. It forms a kind of anticline. [63]

(Testimony of William G. Van Slyke.)

When I sunk the shaft to a depth of fourteen feet I found that the overlying formation was a kind of white, chalklike stuff and lower down it was shale and dried-out oil sand. As the hole went down it got into richer sand. It became very black and if I remember correctly I could smell oil in the sands. I tested all of the sands as I went down and found live oil sands. I tested the sands and found them to be live oil sands. After I had dug the shaft and made my investigation, I put planks over the top of the shaft and covered over the planks with sand and dirt and sagebrush so that any one coming along this part of the property would not notice my explorations.

I went to see M. H. Whittier and told him about the sands I had discovered on the property, the outcroppings and of having sunk a fourteen foot shaft and he went with me to see the property and told me to keep my discovery quiet and he would see whether he could get ahold of the land in question. Whittier advised me to keep my discovery secret for fear someone else would interfere with his getting possession of the property. I took no one else upon the property and kept my discovery a secret. It was in December of 1910 that I took Whittier to observe the property and demonstrate to him the discovery which I had made.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Mr. WILSON.—I have no questions.

(Witness excused.)

TESTIMONY OF BURTON E. GREEN, FOR PETITIONER.

Burton E. Green was called as a witness by and on behalf [64] of the petitioner and having been first duly sworn, was examined and testified as follows:

My name is Burton E. Green. I am now engaged in the oil business and I reside in Beverly Hills, California. I first entered the oil business in the year 1895 at Los Angeles. I had some property at that time in Los Angeles that was adjacent to other oil property and I engaged oil drillers to develop it. In the year 1896 I bought some property near the property that I owned in 1895 and had three wells drilled on that property. I engaged Whittier and O'Donnell to drill the wells on the property which I developed in the years 1895 and 1896. After I had caused about six wells to be drilled in 1895 and 1896 I asked M. H. Whittier if he would not like to associate himself with me and take charge of all drilling operations, for the reason that I wanted to expand and go into the general oil business and the development of oil properties. We formed a partnership for the purpose of drilling and developing oil and selling it.

Our first operation was in the northeastern part of the Los Angeles field. We also operated in the Coalinga oil fields. Our operations in the Coalinga oil fields were on quite a large acreage. We next operated, beginning in the year 1898, in Kern River Country. I bought half a section in fee and se-

(Testimony of Burton E. Green.)

cured a lease on a hundred and sixty acres. We next operated in the McKittrick field where we bought a half interest in a company operating there. This was in the year 1899. [65]

While we were operating in the Kern River field and the McKittrick field we formed the Green-Whittier Oil Company. Our operations in the Kern River Country fields and the Coalinga fields were on a large scale. In the year 1902 the Associated Oil Company was formed. I was one of the three organizers of that company and induced the different individual oil companies to put their properties into the Associated Oil Company. The Associated Oil Company had a capital of forty million dollars.

The occasion for the organization of the Associated Oil Company was that oil production had proceeded very fast and there was an over-production of oil with the consequence that there was but very little market for the production. Oil was selling for from ten cents to fifteen cents a barrel and we united all the smaller companies so we could get a better price and get a larger market for our production.

I was one of the directors and one of the three on the Executive Committee of the Associated Oil Company. I sold out my interest in the Associated Oil Company during the years 1909 and 1910. I sold my interest in the Associated Oil Company for between $500,000.00 and $750,000.00. During the period I was associated with the Associated Oil

(Testimony of Burton E. Green.)

Company that company had probably the largest production group in the State of California. While I was associated with the Associated Oil Company I also operated on my own account in purchasing any advantageous property that I might find and did purchase, during the time of my connection with the Associated Oil Company, leases in the Coalinga field for and on my own account [66]

While I was connected with the Associated Oil Company, I approved sales of oil land and sometimes initiated them.

In the year 1905, I was instrumental in forming and organizing the Amalgamated Oil Company. I was a director in that Company and later its President. The Amalgamated Oil Company operated on a very large scale in the State of California.

I have been instrumental in developing oil fields in what might be called virgin territory or territory that was not proven oil territory. The development in the Kern River Country field was virgin territory. While I was President of Amalgamated Oil Company, I developed the La Habra field, across the valley from the Fullerton oil field, and also on the East side of Wolfskill range which lies just west of Beverly Hills.

In the year 1907 or 1908 I also formed the West Coast Oil Company. I bought a piece of land for the West Coast Oil Company which we paid a half million dollars or more for. I also purchased for the West Coast Oil Company in the year 1909 what

(Testimony of Burton E. Green.)

is known as the Victor Hall property, paying therefor the sum of $500,000.00.

I also organized the Inca Oil Company, purchased the lease for it and negotiated all leasing contracts for it.

In the year 1910 I was familiar with the developments that had occurred in the Lost Hills oil fields and in the McKittrick oil fields, and I had developed part of the McKittrick field and had also bought an interest in a company known as the Union Oil Company of Georgia that owned a number of thousands of acres in the McKittrick field. I was also familiar, in the year 1910, with the Midway oil field. [67]

I was familiar with a large tract of land owned by Mrs. E. B. Hopkins, which lies between McKittrick and Lost Hills. M. H. Whittier came to my office and told me that he had just seen W. J. Hole and Hole had informed him that he had bought the property owned by Mrs. Hopkins. Whittier informed me that one, Van Slyke, had developed oil sand on the property. I went on the Hopkins property with Van Slyke and Whittier. I saw the oil croppings on the property, a trench that had been dug on the south end of a blowout, and confirmed the fact that the outcroppings there were similar to the Lost Hills oil fields on the northeast.

Whittier and myself had had a very close business relationship and we were very careful not to

(Testimony of Burton E. Green.)

divulge the information which we had obtained with respect to the Hopkins property.

Mr. Whittier and I next interviewed Mr. Hole. Hole informed us that he had an option on the 31,000 acres of land of Mrs. Hopkins. I asked him what he would turn it over to us for and he replied thirty three and a third dollars an acre. I informed him if he could properly revamp his option to suit our requirements that we would go into the matter and take the option over. During our negotiations with W. J. Hole we never at any time advised him of the explorations which Van Slyke had made and of the investigation which Whittier and I had made with respect to the Hopkins property, and we did not so inform him of our information until after the option had been secured and the Belridge Oil Company was formed. I paid the $25,000 mentioned in the option of January 5, 1911. I, personally, carried on all negotiations with [68] respect to securing the option and insisted upon the provisions in the option with respect to the right to drill wells upon the property, before we were required to purchase the property. I wanted the entire Hopkins property tied up in an option with the privilege of exploration and developing it, and then if we found oil that we could exercise the option by paying to Mrs. Hopkins the sum of thirty-three and a third dollars per acre.

During all our negotiations with Mrs. Hopkins and Mr. Hole, both Whittier and myself were ex-

(Testimony of Burton E. Green.)

tremely careful not to reveal our information with respect to the property or our reasons for desiring to acquire it. I might have, during the negotiations, revealed the information to some of my confidential associates, such as Michael J. Connell or Frank Buck, who were to be interested in the Belridge Oil Company. Mr. Frank Buck as well as Mr. M. H. Whittier are now dead.

Q. Did you have any trouble getting anybody interested with you, after you told them about it?

A. Whittier had invited Connell in. Frank Buck had been with us in the Associated. He and his wife were visiting me in Los Angeles and I told him that I would like to give him an opportunity to go into this company, that I had a wonderful thing, and he said "Well, Burton, if you want me to go in I will go in" and I said, "Frank, I do not want you to go into it if you do not feel like getting down on your knees and thanking me for the privilege of going in," and he then said he wanted to go in.

Q. In your experience as an oil man over this long period to which your testimony relates, is it usual or unusual to effect an option for the purchase of such a large tract of property as the 31,000 here involved?

A. It was quite an unusual transaction. [69]

The MEMBER.—You mean at that time?

The WITNESS.—Yes.

(Testimony of Burton E. Green.)

Q. Do you know of any other option for the purchase of property that gave you such a long period, that is a year and over if necessary, to explore the property, before you would finally take it, and yet had it tied up under option all that time?

A. No, sir, it was the most favorable option I think I have ever seen. You sometimes get that privilege under a lease, but never under a purchase with a fee simple title.

Q. Was this land particularly fortunate with respect to the type of title that you could get?

A. It was a fee simple title.

Q. There were no Government rights in the matter.

A. No.

Q. No patents that had to be litigated about?

A. No.

Q. It has been your experience, as an oil man, dating as it did, from 1895, and including, as it did, your connection with many large oil companies which you formed or were instrumental in forming, and do you feel, based upon all that experience that you would be qualified if you were consulted, to give a willing purchaser, not compelled to purchase and a willing seller, not compelled to sell, reliable information as to what was the actual cash value, or

(Testimony of Burton E. Green.)

fair market value, of the Belridge Oil property as of January 25, 1911? Do you feel that you could do that?

A. In consideration of the oil croppings we had found and the other oil evidence?

Q. Yes. Taking that into account. Assuming that you knew that and a purchaser came to you and a seller came to you, and you had verified those definite outcroppings on the property, you had seen them and accepted them as a fact, and you knew the locality of the land in 1910, and were familiar with that territory, do you feel that you would be competent to give an opinion as to the cash value or fair market value of that property as of January 25, 1911?

A. I know what I would have been willing to pay for it. [70]

Q. Do you think you would be competent to advise on that?

A. I think I would.

The MEMBER.—You mean——

Mr. MILLIKEN (interrupting).—I want to find out what that land was worth. In other words I will go back a moment.

(By Mr. MILLIKEN.)

Q. Had you made in your mind any sum to which you would have gone per acre, had you been required to do so, to get this option from Hole?

(Testimony of Burton E. Green.)

A. I had it constantly in mind when we were going over this period in completing the revamped option.

Q. How much did you figure that you would give, how high would you go, if you had to?

A. I would have gone as high as a hundred dollars an acre.

Q. Now, based upon your experience and taking into account and assuming all of the known factors, such as Van Slyke's discovery, your own and the verification of M. H. Whittier, and assuming that there was a purchaser willing to purchase, and not compelled to, and a seller willing to sell, but not compelled to, with both in complete possession of all of the facts, and what do you think that property would have brought, its actual cash value or fair market value, on January 25, 1911?

A. I think it would have brought at least $100 an acre.

Q. Mr. Green, do you know of any instances, with respect to stockholders of the Belridge Oil Company, who might have become dissatisfied with their investment and might have had, at some time, a desire to sell their holdings?

A. Yes, sir, we had an instance of that kind.

Q. What was that instance? Relate it, if you will, where it occurred and who was present?

(Testimony of Burton E. Green.)

A. Mr. W. J. Connell, sat in with us in a directors' meeting. He had never been in the oil business before that I knew of. He had some hesitancy about putting up [71] the amount of money that it would cost to develop the property. He talked quite a little about it, and finally M. H. Whittier said that he and Hole had talked it over and they would offer him a half a million dollars for his stock.

Q. Did they offer him a half a million dollars for his stock?

A. They said "We will give you a half a million dollars for your stock in the company."

Q. What did Connell say, if anything?

A. Well, he kind of smiled at that and said, "I will consider that" and he said, "I will just take an option on that," but before the meeting adjourned he said he would refuse to take it.

Q. Now, when this offer was made to him by Hole and Whittier, had oil been discovered on the Belridge Company land?

A. No oil had been discovered in a well.

Q. Well, was it shortly after the incorporation on January 25, 1911?

A. Well, it was while we were putting down the ten mile water line to it and moving rigs and putting up necessary buildings.

(Testimony of Burton E. Green.)

Q. In other words you were going ahead, pursuant to your option, and drilling your first oil well?

A. Yes.

Q. But you had not actually drilled a well and discovered oil?

A. No, sir. We had expended a number of thousands of dollars on the property.

The MEMBER.—Do you know how much stock Mr. Connell held?

The WITNESS.—He had one fifth.

(By Mr. MILLIKEN.)

Q. It has been testified, Mr. Green, that there was 31,000 acres of land in this tract that you got from [72] Emily B. Hopkins, and in your opinion, on January 25, 1911, $100 an acre would have been a fair price for it and represented a fair market value and actual cash value?

A. That is my opinion.

Q. So that if Mrs. Hopkins had gotten what you considered a fair market value or price or actual cash value of the property, she would have gotten $3,100,000 approximately from the property?

A. That is my opinion.

Q. Do you put that as a minimum figure?

A. I put that as a minimum figure, yes.

The MEMBER.—Is that the date of the option?

(Testimony of Burton E. Green.)

Mr. MILLIKEN.—January 25, 1911, the date the Belridge Oil Company acquired it.

The WITNESS.—I will further state that my association with the oil business and knowing what the other companies were doing, that if they had known the facts that we knew about the oil formation we would never have gotten it for a hundred dollars an acre.

Q. You believe that if you were able to get it at thirty three and a third dollars because there was concealed information that you had a right to conceal?

A. Yes, sir, and then Mr. Hole had this property tied up.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Cross-examination.

That upon cross-examination, the witness testified as follows:

I first became casually acquainted with W. J. Hole in 1906. When I first met him he had an agency for the Pierce Arrow automobile and I bought two cars from him, one for M. H. Whittier [73] and one for myself and I don't remember that I saw Mr. Hole between that time and the year 1910 when I saw him with respect to the Hopkins property. M. H. Whittier was present as well as possibly F. B. Henderson, General Manager for the Associated Oil Company and the Amalgamated

(Testimony of Burton E. Green.)

Oil Company, when I first discussed with M. J. Hole the Hopkins property. I discussed with M. J. Hole the Hopkins property subsequent to the discovery which Van Slyke had made on the property. Mr. Hole advised me that he had bought the Hopkins property and I asked him if he had an option to buy it and he replied that he had. I told him that we were interested in acquiring the property and asked what price he would sell for and he informed me at thirty-three and a third dollars per acre. I informed him that the price was satisfactory if we could work out a proper option to meet the conditions that we wished to operate under.

The option to which I refer was not the option dated January 5, 1911. Hole did not show me the option of May, 1910, and did not tell me what were the terms of the option of May, 1910. Mr. Whittier, myself, Van Slyke and my associates had possession of certain knowledge as a result of Van Slyke's activities which Mr. Hole had no knowledge concerning and which we did not impart to him.

Q. The discoveries and prospecting previously done by Mr. Van Slyke constituted an ace in the hole for you, so to speak.

A. I would call it so.

Q. Had you been out to the Hopkins' place prior to this conference? [74]

A. No. I just had Mr. Whittier's say so in the matter.

Q. You had not talked to Van Slyke?

A. I had not.

(Testimony of Burton E. Green.)

Q. But Whittier had?

A. Yes, sir. Van Slyke worked for me and Whittier for a great many years.

Q. It was known to the three of you but not to any outsiders?

A. It was known to the three of us.

Q. Whittier, yourself and Van Slyke?

A. Yes.

Q. And to nobody else?

A. Nobody else at that time.

Q. Did you request Mr. Hole to show you that first option at that time?

A. No, I did not.

Q. At what time did you reach the conclusion in your mind that the land was worth $100 an acre?

A. Well, before we actually secured it.

Q. Well, what do you mean by saying you secured it?

A. When we had the option signed up.

Q. The second option, the one which has been introduced in evidence?

A. Yes, sir.

Q. And did you offer Mr. Hole $100 an acre for that option?

A. I certainly did not.

Q. You have been in the oil game a great many years, have you not?

A. Quite a number. [75]

Q. What percentage of the so-called outcroppings, which you observed when you finally

(Testimony of Burton E. Green.)

visited the premises of the Hopkins ranch, what percentage of outcroppings and other conditions which you found there resulted, when drilling operations had begun, what percentage resulted in the development of oil fields?

A. Everyone that I approved of, the purchase was successful.

Q. How many in number?

A. There was the Coalinga Field, the McKittrick Field, the Kern River Field, the La Habra Field and the Wolfskill property.

Q. You have limited your answer to your own personal experience. I am asking as a general proposition, and as an expert, what percentage of lands where the same general conditions were found, as were found on the Hopkins ranch, resulting in the development of oil fields?

A. I do not know of any similar outcroppings in my observation, except the Lost Hills field. They are exactly similar.

Q. Then these other four that you have mentioned were not similar?

A. They were of a different character. The others were where the formation came up in the hills.

Q. Now, there had never been so far as you knew it at that time, and by that time I mean in January 5, 1911, so far as you knew at that time, there had never been any exploration or

(Testimony of Burton E. Green.)

drilling or oil development of any kind or nature on the Hopkins property, except this 14 foot excavation and what other trenching Mr. Van Slyke might have done?

A. That is all the development that I knew of.

Q. For oil purposes, it was in every sense of the word virgin territory?

A. Virgin territory.

Q. How did you arrive at this figure of $100 an acre?

A. The Lost Hills territory had opened up about a year before and people had paid as high as a hundred [76] dollars an acre after croppings had been exposed. I know that I offered forty thousand dollars for a section and got there just one day too late, in the Lost Hills development.

Q. How far is this Lost Hills structure from the Hopkins property?

A. Well, from the upper end of the Hopkins property I imagine it is about seven or eight miles.

Q. These sales of a hundred dollars per acre in the Lost Hills Section took place, as so far as you know of your own knowledge, at what point in the development of that section?

A. Right at the first.

Q. Before there were any rigs placed?

A. There had been one oil well drilled, one hole.

Q. There had been one hole drilled? How deep do you know?

A. I do not know the depth. It was not deep as I remember it, rather a shallow hole.

Q. Had drilling operations ceased on that particular hole?

A. The people who had drilled it were inexperienced oil men and they had practically the whole country tied up. There was an immediate rush by the different oil companies to acquire other property from other people that owned property in that vicinity.

Q. I am talking about the hole that had been drilled. What had happened to it? Had drilling operations been abandoned on that one hole, or what had occurred?

A. They made this discovery, and then they negotiated with these other companies to take over the property.

Q. Then they had a discovery well, so to speak, before these sales took place. By the way, didn't you testify that it was unusual to find as much as 31,000 acres of land which could be tied up for oil development at that time?

A. I said in fee simple.

Q. Well, on the 25th of January, 1911, you did not [77] have this property in fee simple, but you had an option did you not?

A. The title was in fee simple.

Q. But the title was in Mrs. Hopkins?

(Testimony of Burton E. Green.)

A. Yes. I mean that the title was in fee simple. Generally you have land with locations on it, government land.

Q. Now, who had this Lost Hills section tied up, as you say?

A. As I understand it Dudley & Martin.

Q. Do you know in what way they had it tied up?

A. No, I do not.

Q. What was the approximate acreage of the section that they had tied up, if you know?

A. I haven't any idea about what the approximate acreage was. It was not in one solid body.

Q. Well, how was it divided?

A. Well, as I understand it part of it was Government land that had been filed on for leases, and some of it was acreage that was some miles away.

Q. You do not have any idea of the aggregate of those holdings?

A. I haven't any idea.

Q. Well, was it as much as 31,000 acres?

A. Oh, they didn't have anything to compare with that in a solid body. As I understand it it was scattered all over within ten miles of there. There was one strip, running nine or ten miles, which was further away from the development or as far away from the development as the Belridge Company was from the development on the south.

(Testimony of Burton E. Green.)

Q. Now you advanced this $25,000, I believe you testified, that was paid for this option on January 25, 1911.

A. Yes, sir. [78]

Q. As a matter of fact you were financially able to do that, and you were able to pay Mr. Hole a hundred dollars an acre at that time, were you not?

A. Well, you don't have that much ready cash.

Q. I mean you had resources which you could have turned over without any difficulty?

A. I undoubtedly could.

Q. But you at no time offered Mr. Hole any such sum?

A. I beg your pardon?

Q. You offered him no such sum as $100 an acre?

A. Why should I?

Q. I don't know. I am asking you if you did?

A. I think that is a foolish question.

The MEMBER.—You may answer, but I think you have already said you did not.

(By Mr. WILSON.)

Q. At any rate you did not offer him a hundred dollars an acre?

A. I did not.

Q. As I understand it, Mr. Green, you are basing your estimate of $100 per acre for the land described in this option on the fact that

(Testimony of Burton E. Green.)

in the Lost Hills section, to which you have referred and described somewhat, you knew of sales that had taken place for a similar amount, namely, $100 an acre?

A. I did not base it on that information entirely. I based it on the information that if any of the large companies had had the information that I had they would have paid a hundred dollars an acre for the land.

Q. But that is necessarily a conclusion, is it not, the cost so far as you knew at the time, none of the so-called big companies knew anything about this information which you had as a result of Mr. Van Slyke's activities: none of the companies knew anything about that? [79]

A. I knew that they did not.

Q. Do you know whether or not any of the so-called big companies, up to that time, had made any attempts to purchase this land from Mrs. Hopkins?

A. I know that the other companies had had scouts over the property but they never discovered any indications of oil anywhere on it.

Q. Do you know of your own knowledge of any company that had made any attempt up to that time to secure a lease from Mrs. Hopkins, for oil purposes?

A. I do not know that there was.

(Testimony of Burton E. Green.)

Q. Then why do you say that one of the reasons that you put a figure of $100 an acre was because that is what you think the big companies would have paid?

A. For the very reason that I have stated. They didn't have any knowledge that there was any oil indications on the property.

Q. What you mean is that those companies that had the knowledge that you had would have paid a hundred dollars?

A. That is what I mean.

Q. And what is the basis for your statement in that particular?

A. I have been associated with large oil companies both the Union and the Associated and I know that if it had been offered to them with that information they would have snapped it up.

Q. If you had been an officer of one of the big companies at that time, and you had come into the possession of this knowledge, do I understand from your testimony that you, as a representative of that company, would have made some attempt to secure the property at that figure?

A. I would have secured it at the best figure I could, and I would have gone to that price if necessary.

Q. Now, when this option was actually secured from Mrs. Hopkins, how did you hap-

(Testimony of Burton E. Green.)

pen to know that there was an option between her and Mr. Hole?

A. I do not understand you. [80]

Q. The option which has been introduced in evidence here is between Emily B. Hopkins and W. J. Hole, and you advanced the $25,000 for that option. Why was the option, if you know, between Emily B. Hopkins and Hole rather than Emily B. Hopkins and yourself?

A. Mr. Hole had this first option. I made a contract with Mr. Hole that this option should be taken from my account and be turned over to me when it was finally made. That is the reason I put up the $25,000.

Q. Was that contract reduced to writing?

A. I have a copy of it.

Q. You have it here?

A. Yes.

Q. May I see it, please?

A. Certainly.

Redirect Examination.

Prior to acquiring the option dated January 5, 1911, I personally had been on the Hopkins property and had verified the statements of Whittier with respect to the oil indications. Shortly after oil had been discovered on the Hopkins property we gave an option for the purchase thereof at twelve million dollars.

(Testimony of Burton E. Green.)

It was the practice in California in 1911 to buy prospective oil land—that is the way the oil industry has grown and that is the reason we secured an option on the Hopkins property, because we believed it to be good prospective oil land.

I cannot name the person who purchased or sold the property in Lost Hills for $100 per acre. It was the talk at the time that property sold from $60.00 to $100.00 per acre and some at higher figures. The property to which I have referred was not along the strike. It was off the strike—that is from where the first oil was discovered. [81]

The MEMBER.—What do you mean by "strike"?

The WITNESS.—There is an anticline.

The property in question was off the strike or away from where the first well was found in the Lost Hills section. The property in question was east of the strike. The property that was sold east of the strike was merely prospective oil land.

Q. Well was this $100 an acre price that you have mentioned in good territory with respect to the strike?

A. Not in my opinion, no, and it proved not to be.

Mrs. Hopkins requested that we put up $10,000.00 before preliminary negotiations with respect to the option were undertaken, to show our good faith and after the option was signed I paid the additional sum of $15,000.00, making in all $25,000.00.

(Testimony of Burton E. Green.)

Q. Now Mr. Green your opinion of what a willing purchaser, not compelled to purchase, and a willing seller, not compelled to sell, would have paid for this Belridge territory in January, 1911, is based upon what?

A. It is based upon the large tract of land between the two fields, with the oil showings that it had.

Q. And in giving that opinion you have taken into consideration your whole experience since 1895?

A. Oh, yes, or I would not have been able to.

Q. And you are making the valuation as a practical oil man?

A. Yes, sir.

Q. And what your company would have paid under similar conditions and circumstances?

A. Yes, sir.

Q. What you would have forced anybody to pay?

A. Yes.

Q. And what you would have paid yourself if you had had to pay it? [82]

A. Yes.

Q. You only paid thirty-three and a third dollars an acre for it?

A. Yes.

Q. So that you considered the difference between thirty-three and a third dollars an

(Testimony of Burton E. Green.)

acre and a hundred dollars an acre as an extreme bargain, is that correct?

A. Oh, yes, we knew we had an extreme bargain.

Recross Examination.

The option agreement of January 5, 1911, provided that W. J. Hole was to pay, after the option was exercised, thirty-three and a third dollars per acre. Hole was my agent in handling the option. I am not mentioned in the option agreement but I had a contract with Hole whereby he was acting for me and all negotiations with respect to the option were dictated by me. I was getting the option for the benefit of myself, Whittier and the other people who were subsequently to become the stockholders of the Belridge Oil Company, and in the option agreement provision is made whereby the option might be assigned to a corporation and it was definitely understood that this corporation should be Belridge Oil Company.

TESTIMONY OF MICHAEL J. CONNELL, FOR PETITIONER.

Michael J. Connell was called as a witness by and on behalf of the petitioner and having been first duly sworn, was examined and testified as follows: [83]

(Testimony of Michael J. Connell.)

My name is Michael J. Connell. I reside at Los Angeles, California. I became interested in the Belridge Oil Company at the time of its incorporation on January 25, 1911.

In the latter part of 1910 M. H. Whittier came to see me and told me about a section of land up in the Elk Hills district that was owned by Mrs. E. B. Hopkins and that he was going to get an option on the property in question; that he had had a man who was experienced in oil work go over the property and had received a very favorable report and that he, himself, had checked up the land and examined the property and was satisfied on the question that the property contained oil and could be developed into valuable oil property. He stated that some of his friends were going in with him on the venture, asked me to join with him and I agreed to do so. M. H. Whittier and myself had a very confidential relationship for a long period of time.

At one of the first meetings of the Belridge Oil Company, I made inquiry as to how the property was to be developed, what the overhead would be and if the development was going to be carried along broad and extravagant lines, because if it was to be so developed I might be compelled to sell my interest. M. H. Whittier thereupon asked me what I would take for my interest and I made no answer. M. H. Whittier stated, "I will pay you $500,000.00 for your interest," and I changed the conversation

(Testimony of Michael J. Connell.)

and discussed the question of sale no further. [84]

Q. Is it or is it not a fact that Mr. Whittier made you a definite offer of $500,000?

A. He made this offer at that time.

Q. Was this before or after oil wells had been discovered on the property?

A. Before we started development.

Cross-examination.

Q. To what extent, Mr. Connell, were you familiar with the property covered by the option which has been introduced in evidence here, at the time of this offer made to you by Mr. Whittier?

A. Mr. Whittier explained to me, and explained in some detail, on what he based his value of the property.

At the time Whittier made his offer to me I had not been over the property and had not seen the property. My reason for declining the offer was that I felt the property had much more value and I depended largely upon Mr. Whittier's statement to me and I was willing to take the gamble.

Redirect Examination.

In 1910 I did not pretend to be an oil man although I had lost $400,000 or $500,000 dealing in oil. Whittier told me about all the different indications for oil on the Hopkins property before the corporation was organized,—and before I agreed

(Testimony of Michael J. Connell.)
to take stock in the corporation. I took one-fifth of the stock of the corporation. [85]

(Testimony of F. B. Sutton.)

TESTIMONY OF F. B. SUTTON, FOR PETITIONER.

F. B. Sutton was called as a witness by and on behalf of the petitioner and having been first duly sworn, was examined and testified as follows:

My name is F. B. Sutton. I reside in Los Angeles, California, and am employed by the Belridge Oil Company as well as other corporations. I am now secretary of the Belridge Oil Company and as such am general custodian of the records and books of the Belridge Oil Company.

I was employed by Burton E. Green during the month of January, 1911, and he instructed me to look after the matter of the incorporation of the Belridge Oil Company. He advised me that he wanted the fact of its incorporation kept very secret; that he did not want any information to get out until they had the corporation papers filed and the organization completed, and the option purchased and in the hands of the corporation. I followed his instructions in all respects. I took five clerks in the office and named them as the incorporators of the company in my effort to keep the organization of the corporation secret. If the names

(Testimony of F. B. Sutton.)

of Green and Whittier had appeared as organizers of the corporation, there would have been inquiries as to what they were going to do. I have with me the original minutes of the Belridge Oil Company which show the acquisition of the option dated January 5, 1911. The minutes of the first meeting are dated January 25, 1911. [86]

Whereupon there was then offered and received in evidence petitioner's Exhibit No. 3, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit 3 is the minutes of the Belridge Oil Company dated January 25, 1911, which the witness Sutton has identified.

As Secretary of the Belridge Oil Company, I have the journals showing the opening entries covering the original issue of stock to the Belridge Oil Company, and I can testify that the stock of the Belridge Oil Company was actually issued pursuant to such original journal entry.

The F. B. Henderson therein referred to was at that time General Manager of the Amalgamated Oil Company and was going to be a sort of General Manager of the Belridge Oil Company, but was later taken to San Francisco.

Whereupon there was then offered and received in evidence petitioner's Exhibit No. 4, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit 4 is the original journal entry which was identified by witness Sutton.

(Testimony of F. B. Sutton.)

I also have obtained from the original records of the Belridge Oil Company, the log of the first two wells which were drilled by the Belridge Oil Company.

Mr. MILLIKEN.—I would like to offer the logs of the first three wells drilled by the Belridge Oil Company after they acquired the property.

Mr. WILSON.—I believe the offer is subject to the objection that it is immaterial. It appears from the [87] offered document that the drilling operations to which they refer were begun in each instance at a date subsequent to January, 1911. Now what the production may have been from this property, or any part thereof, is wholly immaterial. We are not concerned with the amount of oil, or the fact that any oil may have been taken from this property or premises subsequent to the date of incorporation of the Belridge Oil Company which, as I recall, was January 25, 1911. The sole issue here is the value to the petitioner, or the fair market value, of the property covered by and included in the option at or about the date of the option. I can see no relevancy or connection between the issue here presented for determination and the contents of the document now offered, and my objection is based on the ground of immateriality.

Mr. MILLIKEN.—I might state, in reply to counsel's statement, that my purpose in offer-

(Testimony of F. B. Sutton.)

ing these oil logs is this: The evidence will show that the first oil well was drilled within three hundred feet of the discovery made by Van Slyke. It is offered for the very definite purpose of, in effect, corroborating the fact that within three hundred feet of where these men found oil indications, oil was found, and they found it within sixty days after they started, and at a ridiculously low depth, so good was the prospect and so valuable was the lease. I might say that if they had drilled an oil well within sixty days afterwards and it had turned out to be a dry hole, was nothing there, the respondent might have a different viewpoint about the introduction of the log from the wells. He would probably be interested in saying "Well, we want to show what these people did within six days," and I want to show that after these indications were found by Green, Whittier and Van Slyke that a well was drilled within three hundred feet of that place.

The MEMBER.—When were those wells started?

Mr. MILLIKEN.—It shows from the logs exactly when they were started. The first well was started March the 11th, 1911, and the well was completed April 21, 1911. The second well was started March 18, 1911, and completed April 7, 1911.

The MEMBER.—Have you a third one there?

(Testimony of F. B. Sutton.)

Mr. MILLIKEN.—No, just two. It also shows foot by foot as when they went down exactly what the structure was that they found and exactly what kind of earth they went through. It shows the geological formations. I think it is pertinent in corroboration. [88]

The MEMBER.—Do the logs show anything with reference to the output of the wells?

Mr. MILLIKEN.—Yes.

The MEMBER.—Are you offering them for that?

Mr. MILLIKEN.—No. I am offering them for the very limited and very definite purpose of corroboration, showing that within a very few days after they got this property that they did what they said they were going to do, that they did it where they said they were going to do it and that they found it there.

The MEMBER.—I am very much impressed, Mr. Wilson, with the thought that this is pretty close to being a part of the res gestae, if not actually a part, so far as the outward indications of the land at the time are concerned. Is that your thought, Mr. Milliken?

Mr. MILLIKEN.—Yes.

The MEMBER.—I will receive the exhibits for the very limited purpose for which they are being offered.

Mr. MILLIKEN.—I specifically do not offer them to prove value. I only offer them for

(Testimony of F. B. Sutton.)

your Honor's information in corroboration of the things that happened right about that same time.

The MEMBER.—You are not offering them for the purpose of showing what the output of these wells was, if any?

Mr. MILLIKEN.—No, sir.

The MEMBER.—Then they will be received for the limited purpose as stated.

Mr. WILSON.—I note an exception, if I may.

The MEMBER.—The exception is granted.

Mr. MILLIKEN.—Will there be objection to substituting a carbon copy?

Mr. WILSON.—No.

The MEMBER.—The right is reserved to permit photographic copies?

Mr. WILSON.—Yes. [89]

The MEMBER.—The right is reserved to withdraw these and substitute photographic copies therefor and they may be received as Petitioner's Exhibit No. 5.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Mr. WILSON.—I have no questions.

TESTIMONY OF WILLIAM G. VAN SLYKE.

William G. Van Slyke was recalled as a witness by and on behalf of petitioner and having been previously duly sworn was examined and testified as follows:

After the Belridge Oil Company was incorporated, I was employed as superintendent and had charge of drilling its first oil wells. The first oil well was drilled about three hundred feet east of the place where I originally sunk my shaft for the purpose of exploring the property.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Mr. WILSON.—No questions.

The MEMBER.—How far was the second well drilled?

Mr. MILLIKEN.—Mr. Van Slyke will probably know.

The WITNESS.—About a quarter of a mile northwest of where I sunk the shaft.

The Belridge oil lands have proven to be very valuable oil territory.

TESTIMONY OF WITNESS HARRY R. JOHNSON, FOR PETITIONER.

Harry R. Johnson was called as a witness by and on behalf of petitioner, and having been first duly sworn, was examined and testified as follows: [90]

(Testimony of Harry R. Johnson.)

My name is Harry R. Johnson. My occupation is that of a consulting petroleum geologist. I received my training in a high school in Washington, D. C., and then as temporary assistant to members of the United States Geological Survey, both in the United States Geological Survey in Washington and in the field. I graduated from Leland Stanford University. I made, while in the employ of the United States Government, general geological map examination of the mines in the Silver City district of Idaho, being a study of the structure of mountain building forces in the Snake River Valley region and a study of the sedimentary formations occurring in parts of that region. I have also made geological surveys in the employ of the United States Government to determine whether land was mineral or non-mineral bearing land.

Upon graduating from Leland Stanford, I majored in geology. As an employee of the United States Government, I also instituted an investigation of the water resources of the United States, and particularly as same related to the San Joaquin Valley and from where the San Joaquin River breaks out of the Coast Range toward San Francisco Bay.

I also assisted in connection with the preparation of a geological survey bulletin covering the years 1906 and 1907 with respect to the then existing development in the Santa Maria oil region in California. In 1906 the Santa Maria Valley in Cali-

(Testimony of Harry R. Johnson.)

fornia was much in the public eye inasmuch as it was in the development stage. My work in the Santa Maria district and in [91] the Coalinga oil field district was entirely concerned with the study of the structure and formation of the oil land and whether given lands were oil lands or non-oil lands.

While employed by the United States Government, I assisted in the preparation of Government Bulletin No. 317 with respect to the Santa Maria oil fields.

During 1907 and 1908, while in the employ of the United States Government, I assisted in an extensive survey concerning the oil bearing lands in the Coalinga region and the Cold Hills region, and north to the McKittrick and Temblar Range region, and, in fact, took into consideration in our report the oil bearing region in and around McKittrick, the Midway Field, the Elk Hills region, the Taft District and the then called Spellacy Hill, and the Maricopa Field. This report is referred to as Bulletin 406 of the United States Geological Survey. This book was published by the Government printing office in Washington, D. C., during the year 1910, and is an official publication of the United States Government respecting the oil lands in the fields and regions which I have mentioned.

In 1910 and 1911 I was acquainted with what is known as the Belridge Oil field, or the property belonging to Mrs. E. B. Hopkins, in Kern County, California, comprising some 31,000 acres. The

(Testimony of Harry R. Johnson.)

closest oil production to the Belridge or Hopkins property, prior to January 25, 1911, was the Temblar Range field which was some five or six miles due South of the Southerly portion of the Hopkins property. The Lost Hills field, or the producing portion, [92] was between five and six miles north of the northerly limits of the Hopkins property. The McKittrick property in the northerly portion was about six miles south of the southerly portion of the Hopkins property. There was a decided similarity between the Lost Hills area and the Belridge or Hopkins property. The Lost Hills area is one which seen from the Southwest is almost indistinguishable from the general slope of the west side of the San Joaquin Valley. As one looks across to the Lost Hills from the foothills of the Temblar Range, which are distant some six or eight miles, the hills become more and more visible, and as one passes down toward the northeast of Lost Hills and turns around and looks back, the ridge of hills is quite evident, far more evident from the northeast side than on the southwest. In the same way, the range of hills which exists in the Belridge District is more clearly visible from the northeast than it is from the southwest, particularly from points high up in the foothills of the Temblar Range. As one looks northwesterly across the plain he would hardly know that there were any hills in the vicinity of Belridge at all. Looking at plate one, which is the larger of the two maps——

(Testimony of Harry R. Johnson.)

The MEMBER.—Are you going to offer that?

Mr. MILLIKEN.—Yes. I will ask that that plate one be marked as Exhibit next in order.

Mr. WILSON.—I would like to know the purpose of it.

Mr. MILLIKEN.—The purpose of the map is to show the relationship between the Belridge Oil Field and other fields at that time in that general region and to show the geological structure which existed in 1908, 1910 and 1911.

[93]

The MEMBER.—You may mark it for identification Mr. Clerk.

Mr. MILLIKEN.—I offer it in evidence.

The MEMBER.—Did you prepare that map?

The WITNESS.—Yes.

The MEMBER.—Under your supervision?

The WITNESS.—It is prepared both under my supervision and by my personal work on it.

Mr. MILLIKEN.—I offer it as—in evidence as the exhibit next in order.

The MEMBER.—It will be Petitioner's Exhibit 6.

Mr. WILSON.—It will be objected to by the respondent until and unless it can be shown that parties to the option agreement were cognizant of all the facts which this witness is now testifying about. This witness is a totally disinterested party and is not interested

(Testimony of Harry R. Johnson.)

at all in the acquisition of the option agreement, and in the absence of any testimony showing any interest on his part the matter is immaterial. We are only interested in the value of certain land here, to-wit, the fair market value of the Hopkins Ranch at a certain time fixed in the year 1911. Now unless the parties who were interested in the acquisition of the option agreement were cognizant of the matters which this witness determines as a result of his investigations and examinations, it is objectionable. I object to it in the absence of any showing that the parties interested in this option agreement knew anything about it, and because these exhibits cannot be material. To illustrate more definitely the point I am trying to make, if a certain piece of real estate had a fair market value on March 1, 1913, we will say, and some time long prior to that date someone had put a lot of buried treasure under the ground, and someone knew that these people were buying and selling that property as of March 1, 1913 and that they did not know anything about the treasure, certainly you would not say that the value of the treasure in the ground could enter into the fair market value as of March 1, 1913, if that fact were unknown to the purchasers and sellers of the property. There is not any connection unless, I say, it can be shown that the witnesses who testify here today, these offi-

(Testimony of Harry R. Johnson.)

cers of the Belridge Oil Company, and the people who are interested on the other side, namely, Mrs. Hopkins and her representative—unless it can be shown that those people know all these facts, when it is wholly immaterial. [94]

Mr. MILLIKEN.—I have brought before your Honor all of the people connected with the Belridge Oil Company who are now living. I am afraid my friend forgets some of the testimony that was adduced this morning. Mr. Green testified that before he endeavored to secure this option he had been in the McKittrick Field and knew about it and knew about the Lost Hills Field and about some sale that had been made there. He brought out the fact that he had been in the Midway Field and brought out the fact that he was familiar with this whole area. He brought out that one of the controlling elements in the acquisition of property was the fact of its situation with respect to these other fields about which Mr. Johnson is now attempting to testify. In addition to that Mr. Van Slyke has testified that he was in the McKittrick Field in 1909 and 1910, that he had been in the Midway Field and been in the Lost Hills Field. Frankly, my purpose in Mr. Johnson's testimony is this: I have shown by Mr. Green, from the business man's standpoint, what a prudent business man

(Testimony of Harry R. Johnson.)

would have done under the circumstances. I want to show by Mr. Johnson, a competent geologist and expert, who was going back and forth from these various fields, and who published responsible reports for the Government on all of these fields in those years, and who is particularly well qualified to testify, to show your Honor the situation from the technical standpoint. I will grant that if Mr. Green, Mr. Whittier, Mr. Hole and Mr. Van Slyke had not known anything about all of these properties contiguous, but had just said we are ready to take the property, that it would not be material; but I have laid the foundation by showing that they were familiar with all these fields, just the same as Mr. Johnson is.

The MEMBER.—We will ask the clerk to mark the exhibits for identification for the present. I want to hear the rest of Mr. Johnson's testimony about the map, and then I will rule on the question of admission.

(By Mr. MILLIKEN.)

Q. Tell us what that map is?

A. The map is the culmination of three United States Geological Survey topographical quadrangles, arranged in such a way as to give continuity of effect to the territory covered by the map. One of these quadrangles, the Cholame quadrangle——

(Testimony of Harry R. Johnson.)

Q. I do not desire that minute description of it. Does this map show the Lost Hills Field?

A. Yes, sir. [95]

Q. Does it show the McKittrick Field?

A. Yes, sir.

Q. Does it show the Midway Field?

A. A portion of the Midway Field.

Q. Does it show the Belridge property?

A. Yes, sir.

The MEMBER.—Is that the Belridge property in blue?

The WITNESS.—The area in light blue is the 30,000 acres of Mrs. Hopkins, the Belridge property.

The MEMBER.—You have a key to that map?

A. Yes.

(By Mr. MILLIKEN.)

Q. Read the key, please.

A. Sheet map of geologic and structural data as of 1908 to 1911. Belridge holdings as shown in blue. The blue line surrounding a portion of the area represents miles of productive oil territory as determined by the map, from United States Geological Survey Bulletin 406, by Arnold and Johnson. The line in red with the cross arrows represents an anticline actual and probable; the line in red, partly solid, partly dashed and partly dotted with

(Testimony of Harry R. Johnson.)

arrows, represents the syncline, actual and probable areas; the spots in bright green oil and gas showings; area in yellow producing oil area as of 1911, and so forth.

Mr. MILLIKEN.—With that identification I renew my offer as an exhibit next in order.

The MEMBER.—You say this map was made as of 1908 to 1911?

The WITNESS.—Yes, based upon my own work in that district at that time.

Mr. MILLIKEN.—I offer it as petitioner's exhibit next in order.

The MEMBER.—Do you persist in your objection?

Mr. WILSON.—The objection is renewed on the grounds heretofore stated. [96]

The MEMBER.—The map will be received in evidence.

Mr. WILSON.—I note an exception, if your Honor please.

The MEMBER.—Exception granted.

There was then offered and received in evidence as petitioner's Exhibit 6, a copy of which is attached hereto and by this reference made a part of this statement of evidence. Said Exhibit 6 is a map prepared by and under the supervision of witness Johnson and shows the geologic and structural data as of 1908 and 1911 in the Belridge field.

I resigned from the United States Geological Survey in 1909 when I had completed the preparation

(Testimony of Harry R. Johnson.)

of Bulletin 406 of the United States Geological Survey. After my resignation from the United States Geological Survey, I immediately entered private practice, opening an office in Los Angeles. My practice consisted of geological examination and reports upon producing and prospective oil area, with approximate estimates of oil contents of the area and judgment as to the value of the lands investigated, both relatively and in dollars and cents. Subsequent to 1910, it was a part of my business to advise prospective purchasers as to what, in my opinion, as a geologist, they should pay for prospective oil lands, or what they would be justified in paying. It was a part of my duties, and I held myself as a person competent to advise people what they should pay for lands based upon known geological information, and I did so.

I was employed by people subsequent to 1910 for the purpose just indicated and clients during the period from 1910 not only bought prospective oil lands but sold prospective oil lands based upon my recommendation of the value in the premises. [97]

I have been in this Court-room and have heard the testimony of Mr. Van Slyke as to the discovery that he made, the shaft that he sunk and what he found on the Hopkins property which he reported to Mr. Whittier. I had been told before this case was called for hearing of the discovery that Mr. Van Slyke had made. Prior to testifying here today, I made a visit to the Belridge Oil property and

(Testimony of Harry R. Johnson.)

corroborated for myself the location of the shaft as sunk by Mr. Van Slyke.

Q. And did you, at the request of the petitioner in this case, visit the Belridge Oil Property ascertaining for yourself, in company with Mr. Van Slyke the location of the shaft he said he sunk in 1910?

A. I visited the property which he referred to in his testimony, and found conditions as he had said they would be found, with one exception. The shaft that had been put down so many years ago was in a bottom of a gulch, at the crossing of an old road, that region is subject to cloudbursts, the material in the district is rather loose, uncemented, the courses of channel streams change very rapidly, and at the point where Mr. Van Slyke said that he put down his shaft, right in the bottom of the gulch, the material had come down and completely filled up to the level of the valley floor again. There was, however, a depression two or three feet deep in the bottom of the stream where, as near as Mr. Van Slyke could remember, the position of the shaft was. With that one exception I corroborated every point that Mr. Van Slyke stated that he found.

Q. Is it a correct statement to make that you corroborated, in material respects, what Mr. Van Slyke said in his testimony?

A. Yes, sir.

(Testimony of Harry R. Johnson.)

The geology and contour of the general country of the Belridge Oil property or the Hopkins property has not changed since 1910—no more than just a few inches of silt that might be deposited along a stream course, by filling in,—but the condition is just the same as it was in 1910, the oil signs just the same and the contour of the surface just the same. [98]

Q. Now, is it improbable, or is it a well founded judgment, where a practical oil man discovers what Mr. Van Slyke has testified that he discovered, to come to the conclusion that that represented valuable oil land?

A. It certainly was the most natural thing and an almost inevitable conclusion. That it was oil land, especially in the light of the experience that he would have had in that same sweep of country, from Sunset north and westward to Coalinga, during the period 1910 and 1911 when a great deal of development was going on.

Q. In other words, based upon experience with surrounding and contiguous territory, and based upon the definite testimony of Van Slyke as to what he found, you say it would represent a most natural, consistent and resultant opinion, that that sort of opinion would naturally be formed, that this was valuable oil land?

A. Yes, sir, and he would have been a poor operator if he had not.

(Testimony of Harry R. Johnson.)

While recently at the Belridge oil field, I obtained specimens and samples of the geological formation on the Belridge oil field, made tests and absolutely confirmed the accuracy of the reports made by Mr. Van Slyke to Whittier as to what he found on the test through analysis. I made my visit to the Belridge oil property for this purpose some two weeks ago.

Q. From a geological standpoint, the things that you found a week ago, near the point where he said he sunk his shaft, were the same things that were there in 1910 when he sunk his shaft —I mean the structural formation and everything were the same, that would give an oil man an indication that there was prospective oil there. Is that true?

A. They were identical.

Q. Now, as a competent geologist, as a person who advised people in 1910, and in the second place taking into account and assuming the location of the structures reported by Mr. Van Slyke, and what in your opinion would a person have been authorized to pay, a person who is a willing purchaser and not compelled to purchase, to a willing seller, not compelled to sell, on January 25, 1911, a person being in possession of the information in possession of which Mr. Green and Mr. Whittier and Mr. Van Slyke were—— [99]

(Testimony of Harry R. Johnson.)

Mr. WILSON.—Just a moment. That is objected to on the ground that this witness has no way of knowing what knowledge these gentlemen had on that date.

Mr. MILLIKEN.—I am asking him to take into account the testimony he has heard by Mr. Green, and the testimony he has heard by Mr. Van Slyke, and his report to Mr. Green and Mr. Whittier.

The MEMBER.—You have heard that testimony?

The WITNESS.—Yes.

The MEMBER.—You have been present here during this trial?

The WITNESS.—Yes.

The MEMBER.—And you have followed the testimony closely?

The WITNESS.—As closely as I could.

The MEMBER.—Then he may answer.

Mr. WILSON.—I desire to note an exception.

(By Mr. MILLIKEN.)

Q. Assuming those things what—would a man have been justified in paying?

A. Very close to three million dollars—two million nine hundred and some odd thousand.

The MEMBER.—How did you arrive at that figure?

(Testimony of Harry R. Johnson.)

The WITNESS.—By the methods used by myself and other geologists at that time in determining values and of prospective territory.

(By Mr. MILLIKEN.)

Q. And, in the position you were in 1910, holding yourself out as a person that was competent to advise people, if a would be purchaser had come to you, in your capacity as a consulting petroleum geologist, and had told you the definite verifications that they had, plus your own intimate knowledge of the country, its contour and topography, you would have told them that they would have been justified in paying approx- [100] imately two million nine hundred thousand dollars for the property?

A. Yes, sir, for the thirty odd thousand acres of the Hopkins property.

Mr. MILLIKEN.—The witness is tendered for cross-examination.

Cross-examination.

(By Mr. WILSON.)

Q. The value you have just stated is one which you testify you arrived at by methods such as were used by yourself and other geologists, and when you say "yourself" you mean in the capacity of a geologist?

A. I mean in the capacity of a geologist familiar with the then methods of valuing oil

(Testimony of Harry R. Johnson.)

properties in that part of California, both prospective and producing. You can call me a petroleum engineer if you want to, that is a part of the training of a geologist.

Q. And in that particular matter it is a result not only of scientific education but with years of experience in your chosen profession?

A. Yes, plus several years of experience in that portion of the San Joaquin Valley which at that time was very active in the transfer of properties, and the geological conditions there were quite similar so that I had a basis for establishing a mental background of values as expressed in terms of geologic criterions, if I make myself clear.

The MEMBER.—In your opinion, and the estimate you have given, the figure you have given, was a fair market value of this property at that time?

The WITNESS.—That is correct, as of January 25, 1911, prior to the discovery of any oil wells on the property.

(By Mr. MILLIKEN.)

Q. In arriving at that value you have excluded from your mind any subsequent development after January 25, 1911, have you? [101]

A. Absolutely.

Q. You have eliminated from your mind the particular oil discovery that was made upon

(Testimony of Harry R. Johnson.)

the Belridge property and have taken into account only the factors existing on January 25, 1911?

A. That is correct.

Q. And in your opinion the actual cash value, the fair market value, as between a willing purchaser, not compelled to purchase and willing seller not compelled to sell—if you had been advising them on January 25, 1911, you would have recommended that they pay two million nine hundred thousand dollars for the property?

A. For the 30,000 acres of Hopkins property, yes.

By maps which I use I am able to locate the property which the Associated Oil Company purchased in 1910 and referred to in Exhibit 2 in evidence in this case. The property which the Associated Oil Company purchased, as before mentioned, was not in as good prospective oil territory as the Belridge oil property.

A. From what I know of the position of that property as you have described it, I would say it was not in as good territory, and I can give my reasons for that, very briefly.

Q. Do so, please?

A. In my investigation of the general region in December of 1908, in the preparation of Bulletin No. 416, Mr. Arnold and I found that the

(Testimony of Harry R. Johnson.)

evidences of oil in the croppings in the foothills of the district to the southwest of the Lost Hills—and when I say "foothills" I mean the foothills of the Temblar—the evidences of oil were less specific, less definite, that is the oil sands and croppings were less heavily impregnated with oil, that is the oil shales in which they originated, were less heavily impregnated with oil than some of the rocks in the region lying further to the southeast, especially in the region around Gould Hills, which represents the nearest foothill territory to the Belridge property. In this Gould Hills area there are very extensive showings of oil sands and oil shales which were part of the basis that I used in [102] determination of value and that is the reason why I considered the property purchased by the Associated Oil Company, lying generally to the northwest of the Hopkins property as less valuable for oil than the lands which the Belridge Company acquired.

All my observations, both those made in 1911 and those made when I visited the property of Belridge Oil Company previous to this hearing, absolutely confirm in every detail the facts which witness Van Slyke reported to Whittier. This applies both to the type and location of the property as well as the analysis of the soil and the discovery which he made. And the same facts are present in the Bel-

(Testimony of Harry R. Johnson.)
ridge property today to confirm these facts and statements as they existed in the year 1910.

TESTIMONY OF W. W. ORCUTT, FOR PETITIONER.

W. W. Orcutt was called as a witness by and on behalf of the petitioner and having been first duly sworn, was examined and testified as follows:

My name is W. W. Orcutt. I am employed as a geologist with the Union Oil Company of California. I graduated from Stanford University in the year 1895 with an A. B. degree and majored in geology while at said University. Subsequent to my graduation and for a period of two years, I was engaged in the general engineering business, particularly hydraulic engineering.

In 1897 I became employed by the Union Oil Company and have been with that Company ever since. I first organized the geological department of the Union Oil Company. Later on I was chief engineer and manager of the geological and land department for the Union Oil Company, and at a later date—[103] its Vice President, and since the year 1897 I have been in charge of the Geological and Land Department of the Union Oil Company.

In the early history of the Union Oil Company, it was a fifty million dollar corporation. It is now a corporation with a capitalization of one hundred

(Testimony of W. W. Orcutt.)

million dollars and has very extensive holdings in the State of California.

I have had a great deal to do with leases which the Union Oil Company has acquired as well as leases which it has purchased on oil properties in the State of California. In 1910 and 1911 I advised the Union Oil Company with respect to the purchase of lands, as to whether they were good or bad.

One week prior to my testimony here today, I visited the Belridge Oil Company property in company with the witness Johnson and witness Van Slyke. I have heard the testimony of both witnesses and at the Belridge oil property I made the same investigations to which witness Johnson has testified and I confirm the statements which the witness Johnson has made in whole with respect to the contour and topography of this land, and what we found at the Belridge oil property to confirm the testimony of witness Van Slyke as to his discovery in 1910.

I was familiar, during the years 1910 and 1911, with the Midway Oil Field, Lost Hills Section, McKittrick Field and with the general fields in and around the Belridge property.

Q. Accepting as a fact that there had been brought to the Union Oil Company in 1910, a definite verification of the explorations made by Mr. Van Slyke, to which he has testified—you heard his testimony, didn't you? [104]

A. I did.

(Testimony of W. W. Orcutt.)

Q. Assuming there was a verification of the facts testified to by Mr. Green and assuming your familiarity with that property during all of the prior years; assuming you were employed in the capacity to advise a responsible corporation with respect to the purchase of oil lands, and what in your opinion would you have recommended that the Union Oil Company pay for this property, or any prospective purchaser not compelled to purchase it from a seller not compelled to sell, and what would you have recommended that they pay for the Belridge Oil property in January of 1911 on January 25th of that year?

A. I would have recommended that two million seven hundred thousand dollars.

Mr. WILSON.—You could not say, of course, that the Union Oil Company would have purchased for that figure?

The WITNESS.—No. I say I should have recommended that and would have done so.

The MEMBER.—In your opinion is that the fair market value of the property as of that date?

The WITNESS.—Yes, it is.

Mr. MILLIKEN.—In your opinion is that the actual cash value as of that date?

The WITNESS.—Yes, sir.

Mr. WILSON.—On what do you base your opinion?

(Testimony of W. W. Orcutt.)

The WITNESS.—There are some things that would influence me in arriving at that conclusion. First of all the similarity of the outcroppings and the structure of this particular area with that of the Lost Hills and with the Buena Vista Field and several other fields throughout Southern California and Central California, the uprising and the extension of that structure for many miles into the Belridge property and made it appear that quite a large proportion of that 31,000 acres would be good oil territory. They had the right structural and geological conditions to make an oil field.

Cross-examination.

(By Mr. WILSON.)

Q. The basis of your opinion consists of your scientific education along the lines of geology and engineering, [105] coupled with a good many years of actual experience in your profession, isn't that true?

A. Yes.

Mr. WILSON.—I do not have any further cross-examination.

Redirect Examination.

In arriving at my estimate of value of the Belridge Oil property or the lands of Mrs. Hopkins on January 25, 1911, I have absolutely closed my mind to what has taken place in these properties subse-

(Testimony of W. W. Orcutt.)

quent to January 25, 1911. And in arriving at the value, I have not only taken into account my special training as a geologist but my knowledge in general of oil properties as well as the general condition of affairs at January 25, 1911.

I am not interested in any way in the outcome of this hearing. In fact, I am the chief geologist and Vice President of the Union Oil Company which is a competitor of the Belridge Oil Company.

The MEMBER.—The value you give is as of January 25, 1911.

The WITNESS.—Yes, sir.

Mr. MILLIKEN.—May it please your Honor, I now request that the restrictions which your Honor imposed and which I accepted, as to Exhibit No. 2 be removed, Exhibit No. 2 to be the minutes of the Associated Oil Company with respect to the purchase of some 24,000 acres of land.

The MEMBER.—Do you now offer the exhibit without the qualification?

Mr. MILLIKEN.—Yes.

The MEMBER.—I remember the offer and the qualification. Do you object to its receipt now, Mr. Wilson? [106]

Mr. WILSON.—Yes. The objection is renewed on the ground that the only manner in which the lands described and included in the document had been compared with the lands covered by the option agreement and involved

(Testimony of W. W. Orcutt.)

in this proceeding, is by a scientific explanation of similarity to the topography and contour. There has been no comparison shown whatever from the standpoint of financial value. There has been no evidence whatever to the value, in purchase and sale, of lands near the 31,000 acres of the Hopkins tract. All we have here is a certain document made up of the minutes of this company of the purchase of some 24,000 acres of land, and that stands alone, except, as I have already stated, for what I would term a scientific comparison, through the medium of scientific terms, without any tying up, so to speak, with value from the standpoint of the layman or individual who were concerned and connected with the transaction involved. I have listened very carefully and I confess I do not recall any testimony whatever, except the testimony by Mr. Johnson relating to a similarity in contour of the land and in topography, and they certainly are not all of the major elements entering into the value of land for any purpose. The objection heretofore made is at this time renewed.

The MEMBER.—Mr. Milliken, will you now state the purpose of your offer?

Mr. MILLIKEN.—The purpose of my offer is to show that before the Belridge Company land was obtained, under option, from Emily B. Hopkins, that there had changed hands at

(Testimony of W. W. Orcutt.)

sixty six and two thirds dollars an acre, land that was not as good as the Belridge Oil Company's land, land that was not more advantageously situated; that is it was purchased before the Belridge property was purchased, while here the Government has restricted us to a value of less than half of what the Associated Oil Company paid over a million dollars for, these 24,000 acres.

The MEMBER.—I remember the testimony. Have you stated your purpose?

Mr. MILLIKEN.—That is my purpose.

The MEMBER.—Just what is your objection, Mr. Wilson?

Mr. WILSON.—I want to offer this further objection, in addition to what I have stated in the record: That the document now offered, is the minutes of a meeting relating to the purchase by the Associated Oil Company of the lands described therein, and attached thereto are photostatic copies of certain checks which admittedly were given in payment of the land. Now there is nothing in the record as to the [107] circumstances attending that sale. There isn't any evidence as to whether or not that was a sale made in the open market or whether it was a forced sale, or no evidence as to the circumstances under which the Associated Company bought it or the sellers sold it. Now, in the absence of evidence tending to show the cir-

(Testimony of W. W. Orcutt.)

cumstances attending the sale how can it properly be used as a comparative? How can the price which was paid be offered to compare with the transaction which we have here? Now if the petitioner expects to use this purchase by the Associated Oil Company as a comparative, then, surely the board and the respondent are entitled to some evidence of the surrounding circumstances, something more than the minutes of a meeting.

The MEMBER.—This morning, when the offer was made, you expressed your position that you had no objection to it provided that it was shown that the land in question was similar and of similar character to the land of the Belridge Oil Company.

Mr. WILSON.—Yes.

The MEMBER.—And it seems to me that the objection that you have now made is not timely, as the witness who was on the stand has apparently left the city.

Mr. MILLIKEN.—I might also make this observation, if you will permit me. I asked the witness if it represented the sole consideration as stated in the minutes, which was given for the property and he answered that it did and then I asked him if it truthfully recorded the entire transaction and he said it did.

The MEMBER.—He also testified that there was some payments made to some firm of

(Testimony of W. W. Orcutt.)

brokers, and he testified as to the net cost of the acreage.

Mr. MILLIKEN.—The objection was as to whether or not they could be connected up and shown to be similar land, and I submit that through the witness Johnson I have connected them up and shown the similarity of the lands.

Mr. WILSON.—If I may say a word at this stage of the proceedings. In the first place the witness this morning was secretary of the company. There was no showing that he was a participant in the sale or anything or that he knew anything about it, except that he testified as to the authenticity of the records. There isn't any dispute that the sale took place, but the point is that the petitioner is here attempting to show the sale of lands which, [108] aside from a scientific explanation given by the one witness Johnson, have not been shown to be comparative or similar too, or to have the approximate value of the lands involved here. The objection I made this morning was on the proposition of showing similarity between the lands involved in the transaction and the lands we have here. The respondent submits at this time that that has not been done. If it is your Honor's view that the respondent cannot at this time offer any further objection to the one offered this morning, it is my understanding that the matter is subject to objection at any

(Testimony of W. W. Orcutt.)

time until it is actually in the record. As I understand it the document had not yet been unqualifiedly introduced into the record, and I think the objections by the respondent are well taken, as I have heretofore stated, and renew them at this time.

The MEMBER.—The reservation which counsel for the respondent made at the time that Exhibit No. 2 was offered this morning in the first instance, and which are now put in the form of an objection—I understand it is now in the form of an objection, and it is overruled. It seems to me that the objection is untimely at this time.

Mr. WILSON.—May the respondent have an exception.

The MEMBER.—Yes.

Mr. WILSON.—The petition filed in this appeal alleges among other facts, the following, appearing in paragraph three: "The taxes in controversy are income profit taxes for the years 1921 to 1923 inclusive are more than $10,000, to-wit: $54,671.65. That allegation is admitted in the respondent's answer.

Referring to the 60 day letter, made the basis of the appeal, and more particularly to the statement attached thereto, on pages 2 and 3, we find deficiencies for the two years 1922 and

(Testimony of W. W. Orcutt.)

1923 in the sums of $4692.89 and $4684.91 respectively.

The MEMBER.—Just a minute, I do not quite follow that.

Mr. WILSON.—That is the 60 day letter.

[109]

The MEMBER.—You have the figure here $4692.89. Is that right?

Mr. MILLIKEN.—That is all admitted in the petitioner's answer.

The MEMBER.—That is for the year 1922?

Mr. WILSON.—For 1922 the proposed deficiency is $4692.89 and the 1923 $4684.91. The respondent at this time moves to amend the answer, as to paragraph three, wherein it is alleged that the taxes in controversy are $54,671.65.

The MEMBER.—I understand that you are moving to amend the answer?

Mr. WILSON.—Yes, the purpose of the motion being that the testimony here today has been confined to the one issue, which is the year 1921, and therefore any testimony or evidence introduced relating to the adjustments which occasioned the proposed deficiency for 1922 and '23 is not applicable, the petitioner has waived and abandoned any protest or objections to those adjustments of 1922 and '23 and the total amount is therefore not in controversy.

(Testimony of W. W. Orcutt.)

The MEMBER.—As I understand it in the amendment you want to change the figure 54,-000 to another figure?

Mr. WILSON.—I am not seeking to change it, but to deny that that is the correct amount in controversy. The reason I am making this motion is that it is preliminary to a second motion, that the deficiency determined by the commissioner for the year 1922, in the sum of $4689 and the deficiency determined by the commissioner for the year 1923, in the sum of $4684, that they are determined by the board at this time to be the sums therein set out, there being no evidence introduced by the petitioner relating to the adjustments that occasioned this proposed deficiency. In other words the respondent contends that the petitioner has waived that matter and there is no controversy now as to the years 1922 and '23.

The MEMBER.—I will grant your motion to amend your answer, and as to your other motion I will take it under advisement and dispose of it when we dispose of the entire case.

Mr. WILSON.—The respondent rests. [110]

Mr. MILLIKEN.—Counsel for the petitioner desires to respectfully amend the petition to conform to the proof adduced here today. Comes now the petitioner and respectfully moves the board to be allowed to amend its petition filed in this cause as follows:

(Testimony of W. W. Orcutt.)

The respondent further erred in that he refused or failed to allow this petitioner a paid in surplus in accordance with Section 326 of the Revenue Act of 1921 in that the assets, i. e., option paid in for stock had an actual cash value, at the time paid in clearly and substantially in excess of the par value of said stock, in the amount of $671,806.40.

The MEMBER.—What do you say to that motion, Mr. Wilson?

Mr. WILSON.—The resondent has no objection to the motion providing the answer may show the general denial of the allegation of facts therein contained.

The MEMBER.—The motion is granted and the record will show that the respondent has entered a general denial to the amendment to the petition just made.

Mr. MILLIKEN.—Petitioner rests.

The foregoing evidence is all of the material evidence adduced at the hearing before the United States Board of Tax Appeals and same is approved by counsel for petitioner-taxpayer.

LLEWELLYN A. LUCE,
Counsel for Petitioner.

The foregoing is all of the material evidence adduced at the hearing before the United States Board of Tax Appeals and same is approved by the undersigned as attorney for the respondent-Commissioner of Internal Revenue.

C. M. CHAREST,
General Counsel,
Bureau of Internal Revenue. [111]

The foregoing is all of the material evidence adduced at the hearing and in order that same may be preserved and made a part of the record, this statement of evidence is duly approved and settled this.....day of ....., 1932.

.....,
Member-United States Board
of Tax Appeals.

Approved and ordered filed this 20th day of Dec., 1932.

LOGAN MORRIS,
Member.

[Endorsed]: Filed December 20, 1932. [112]

PETITIONER'S EXHIBIT 1.

AGREEMENT made this 5th day of January in the year one thousand nine hundred and eleven, by and between EMILY B. HOPKINS, of the City and State of New York, party of the first part, and W. J. HOLE, of the City of Los Angeles, State of California, party of the second part.

WITNESSETH:

That the parties hereto each in consideration of the covenants of the other, and of the Dollar ($1.00) to each in hand paid by the other, and other good and valuable considerations, receipt whereof is hereby acknowledged, do covenant and agree to and with each other as follows:

FIRST: The party of the second part agrees to pay to the party of the first part, or her counsel, F. K. Pendleton, on her behalf, on the execution and delivery hereof, the sum of Twenty-five Thousand Dollars ($25,000.) for the right or option to purchase from the said party of the first part at any time before the expiration of one year from the first day of January, 1911, on the terms and at the price hereinafter set forth, all those certain lands in the County of Kern in the State of California, more particularly described as follows:

Sections 25, 26, 27, 28, 29, 30 and 35, and the SW¼ of Section 19, and the S½ of the SE¼ of Section 19, in Twp. 27 South, Rg. 20 east; Sections 28, 29, 30, 31, 32 and 33, and the West ½ of Section 27, and the NW¼ of Section 34 in Twp. 27 South, Rg. 21 East; the North ½ and the North ½ of the South ½ of Section 1; all of Section 2, except the South ½ of the SE¼ thereof; the South half of the SE¼ of Section 12 and Section 13, in Twp. 28 South, Rg. 20 East; Sections 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 17, 18, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 32, 33, 34 and 35 in Twp. 28

South, Rg. 21 East, M. D. M., containing in all substantially an area of 30,845.96 acres of land, subject to pipe line, telegraph and telephone rights to Producers Transportation Co., and Associated Pipe Line Co., and a lease to Miller and Lux for one year from January 1st, 1911, for grazing purposes and all such rights of way for pipe lines, telephone and telegraph lines, or other rights, as may have been heretofore granted or conveyed by said party of the first part, and now of record in the office of the Recorder of Kern County, California. [113]

In the event of the exercise of said option by said party of the second part, the said sum of Twenty-five Thousand Dollars ($25,000.) paid on the execution hereof as aforesaid shall be applied and allowed on account of the purchase price of said lands, otherwise to belong to said party of the first part absolutely.

Second: The party of the first part hereby agrees on compliance by the party of the second part with all the terms and provisions hereof in the manner and within the times herein specified, and payment of the purchase price as herein provided on thirty days previous notice in writing from said party of the second part to the said counsel of said party of the first part, delivered at his office in the City of New York, of the intention to exercise said option, to sell, transfer, assign and convey to said party of the second part the said lands afore-

said free from any and all liens and encumbrances, except as aforesaid. The deed of conveyance to be in proper form to convey said lands above mentioned and to be prepared by counsel for said party of the first part and delivered to said party of the second part, at the office of F. K. Pendleton, 25 Broad Street, Borough of Manhattan, City of New York, at twelve o'clock noon on the day to be specified in said notice aforesaid, or at such other time and place as may be mutually agreed upon by said counsel and said party of the second part.

THIRD: The purchase price of said property and the terms and conditions of the said option are as follows:

"A". The purchase price is Thirty-three and one-third Dollars ($33\frac{1}{3}$) per acre, viz., the sum of One Million, Twenty-eight Thousand, One Hundred and Ninety-eight and Sixety-seven one-hundredths Dollars ($1,028,198.67) payable as follows: One-tenth at the time of delivery of deed as aforesaid; of said one-tenth the sum of Seventy-seven Thousand Eight Hundred Nine- [114] teen and eighty-six one-hundredths Dollars ($77,819.86) is to be paid in cash, and a credit is to be given to said one-tenth payment in the sum of $25,000, which has heretofore been paid for the option. The balance of said purchase price is to be paid in yearly installments, with interest on the unpaid balance from time to time remaining unpaid at the rate of 5% per annum, from date of delivery of deed, viz.: one-tenth

of said purchase price, i. e., One Hundred and Two thousand, Eight Hundred and Nineteen and eighty-six one hundredths Dollars ($102,819.86), with interest as aforesaid on the first day of January in the year 1913, and on the first days of January each of years 1914 to 1917, inclusive, and one-fifth thereof, viz., Two Hundred and Five Thousand, Six Hundred and Thirty-nine and Seventy-two one-hundredths ($205,639.72) with interest as aforesaid on the first day of January of years 1918 and 1919, respectively. All of said deferred payments to be represented by mortgage notes secured by a purchase money first lien mortgage on the lands herein described, such mortgage to be delivered at the time of delivery of the deed aforesaid, and to be prepared by the counsel aforesaid of said party of the first part, and to contain the usual clauses, including provisions for maturity in case of default in the payment of principal, interest, taxes or other provisions, and also a clause that all oil or gas from said property in excess of the amount used for fuel in the development or operation of said property by second party, and the proceeds or revenue derived from the sale thereof in excess of the amount of money expended by said second party for the improvements or developments placed on said land, shall be applied to the payment of the sums secured to be paid by said mortgage until paid in full, first party agreeing that the amounts so derived shall be applied to the earliest maturing notes of said second party. [115]

And also a clause allowing pre-payment at any time on thirty days notice of the whole or any part of the principal secured to be paid; and also a clause providing that in the event the owners of the property desire to sell any portion of the property covered by said mortgage, the holder of said mortgage will release the premises so sold from the lien thereof, providing the price and terms of sale are satisfactory to said holder, and the purchase money is applied as payment on account of amount secured to be paid by said mortgage.

First party further agrees that should any sums of money derived from the sale of the land as aforesaid be paid to it by second party, first party will apply such payments on the earliest maturing notes of said second party.

"B". The party of the second part shall drill on said lands four proper and suitable wells for the discovery of oil or gas, same to be located on such portions of said property as the said party of the second part may select. The drilling of at least two of such wells shall be commenced as soon after the date hereof as two first-class drilling outfits can be installed on the property, and the necessary water for same provided, and thereafter the second party shall continuously and diligently prosecute the work of drilling on said two wells until oil or gas shall have been found, or until said second party shall decide to abandon the further drilling of such wells.

And second party agrees that within sixty days after completing such first two wells, or the aban-

donment of such two wells, and the withdrawal of the pipe therefrom, if not purchased by first party, to commence the drilling of a second two wells with the same drilling outfits as used on the first two wells, and to prosecute the drilling of the second two wells diligently and continuously, in good faith, until oil or gas shall have been found in said second two wells, and the completion thereof, or [116] until the second party shall decide to abandon further work on said second two wells.

Said second party may drill as many more wells as he may elect within the time specified for the drilling of the said four wells.

All wells drilled, or to be drilled, hereunder shall be drilled in a workmanlike manner for the production of oil or gas, and all care taken and proper methods adopted for the prevention of the entrance of water into any oil bearing formation in accordance with requirements of the statutes of the State of California. In the event of the abandonment of any of the wells drilled hereunder, the party of the first part shall have the right and option for ten days after notice of such abandonment, to purchase the casing in any one, or all, of the wells so abandoned, at the actual cost of such casing at the well site. If first party does not exercise such option within ten days after notice shall have been given to it by second party, the second party shall have the right to remove such casing and all other material from the location of such abandoned well or

wells. In the event of the removal of the casing from an abandoned well, the second party agrees to protect the oil bearing formation from the intrusion of water, in accordance with the statutes of the State of California. In case the party of the first part purchases any of the said casing, then the well where such casing is shall not be injured by said party of the second part in any particular whatsoever.

In the event of the discovery of gas or oil in paying quantities on the property aforesaid, prior to the delivery of deed as hereinbefore mentioned, the second party agrees that all proceeds derived from the sale thereof, in excess of the fuel consumed in the operation and development of this property, shall be the property of and belong to said party of the first part; and said second party further agrees to pay to first party such surplus proceeds; and first party agrees that if second party exercises this option to purchase, said first party will credit [117] second party with the amount of such proceeds on the money first falling due on account of such purchase.

"C": In the event that the first two wells to be drilled, as hereinabove provided, shall prove to be what is known as "dry" wells, and the two additional wells, or either of them, hereinbefore provided for, shall not have been completed by the first day of January, 1912, hereinbefore referred to, the option hereby given to purchase said property on

the terms aforesaid shall be extended until the expiration of thirty days after the finding of oil or gas in the said last two wells and completion of same, or the abandonment of work on the same; provided, that the said party of the second part continuously and diligently prosecutes the drilling of said wells aforesaid with all reasonable speed until oil or gas is found or said wells abandoned; and in the event the time to exercise the option is extended, as in this clause provided, the notes and mortgage securing the same shall be dated as of the date of the exercise of said option and the deferred payments represented thereby shall be extended accordingly.

"D": The party of the first part shall have the right at any time, through agents appointed by her or her counsel aforesaid, to investigate all the work and operations being carried on by said party of the second part on the property covered hereby, and for that purpose shall have free access at all reasonable times to all buildings or premises occupied or used by the said party of the second part, who shall himself or through his representatives afford to the representatives of the said party of the first part, all reasonable opportunity to make thorough examination and investigation of all such work or operations, including the logs of any and all wells drilled, sunk or opened, and any maps or charts of said party of the second part, and to acquire all additional information concerning the same.

And the said party of the second part shall furnish, when so requested, to the counsel of the party of the first part, or his [118] order, a log of any and all wells drilled by second party, and a map or chart on which shall be located the position of such well or wells.

"E". The party of the second part shall have the right, if he so elect, at the time of the exercise of the option by him to purchase the said property as aforesaid, to take title thereto in the name of a corporation to be organized by him for the purpose, which corporation shall execute the notes and mortgage hereinbefore referred to, and the execution thereof by such corporation shall be deemed a compliance with the terms of this agreement.

"F". In the event that the said party of the second part shall not exercise the option to purchase said properties as hereinbefore provided, he shall at the request of the said party of the first part at any time after the expiration of said option, execute in writing an instrument in proper form setting forth that he has not exercised the said option, and releasing each and every right hereunder, such instrument to be prepared by the counsel of the said party of the first part, and to be acknowledged by the said party of the second part in such manner as shall entitle the same to be recorded, and shall be delivered to the said party of the first part, or her counsel aforesaid, in order that the

same may be recorded if desired by said party of the first part.

FOURTH: This agreement shall be binding upon and enure to the benefit of the respective representatives and assigns of the parties hereto.

IN WITNESS WHEREOF the parties hereto have hereunto set their hands and seals the day and year first above written.

Emily B. Hopkins.
By F. K. Pendleton,
Atty. in fact.
W. J. Hole.

IN PRESENCE OF:
Roswell C. Otheman. [119]

State of California,
County of Los Angeles.—ss.

On this 5th day of January in the year nineteen hundred and eleven before me, E. T. STODDARD, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. J. Hole known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] E. T. Stoddard,
Notary Public in and for said County. [120]

State of California,
County of Los Angeles.—ss.

On this 25th day of January in the year nineteen hundred and eleven before me, E. T. STODDARD, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared W. J. Hole known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In Witness Whereof, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

[Seal] E. T. Stoddard,
Notary Public in and for said County. [121]

ASSIGNMENT.

IN CONSIDERATION of the payment of Ten Dollars ($10.00) and other valuable consideration, the receipt of which is hereby acknowledged, I, W. J. Hole, do hereby sell, transfer and assign to the BELRIDGE OIL COMPANY, a corporation organized and existing under and by virtue of the laws of the State of California, and having its principal place of business in the City of Los Angeles, County of Los Angeles, State of California, all of my right, title and interest in and to the foregoing agreement, dated January 5th, 1911, between Emily B. Hopkins and myself, covering all those

certain lands in the County of Kern, State of California, as particularly described in said agreement.

WITNESS my hand this 25th day of January, 1911.

[Seal] W. J. Hole.

Notarial Acknowledgment. [122]

[Page 123] is photostat inserted opposite.

PETITIONER'S EXHIBIT 2.

MINUTES OF SPECIAL MEETING OF BOARD OF DIRECTORS OF ASSOCIATED OIL COMPANY

San Francisco, Cal., September 6, 1910.

Special meeting of the Board of Directors of Associated Oil Company, held at San Francisco, California, on September 6, 1910, pursuant to resolution adopted by the Board of Directors on February 28, 1910.

The meeting convened at eleven o'clock a. m.

Mr. W. F. Herrin, President in the Chair.

Secretary O. Scribner in place.

The Chairman directed the Secretary to call the roll, which disclosed the following:

Present: Directors W. F. Herrin, W. S. Porter, Paul Shoup, F. H. Buck, O. Scribner, John C.

30026 #1#

AGREEMENT.

between

Emily Hopkins,

And

W. J. Hole.

Dated. 5th day of January 1911.

Recorded at Request of

W. G. Van Slyke

JAN 28 1911

At 35 min. past 8 A. M.

in Book 26 of Agreements

Page 391 [illegible] County Records

[illegible]

4/14/20

Kirkpatrick, J. A. Chanslor and Rudolph Herold, Jr.

Absent: Directors R. P. Schwerin, Burton E. Green and R. T. Dumble.

The Chairman announced a quorum present, and the meeting ready for the transaction of business.

Thereupon the Secretary read the minutes of meeting of the Board of Directors of Associated Oil Company held on August 2, 1910, appearing on pages 153 to 157, volume 4 of Minutes, which minutes were approved as read.

Thereupon the Chairman submitted report of the Executive Committee of their actions commencing August 2, 1910, and ending August 30, 1910, which report on motion of Director Herold, seconded by Director Buck and unanimously carried, was ordered received and placed on file, and the actions of the Executive Committee as therein set forth ratified, approved and confirmed.

The Assistant General Manager reported that acting under authorization of the Executive Committee, the Associated Oil Company had acquired by assignment dated the 2nd day of September, 1910, a certain contract bearing date July 7, 1910, executed by the Carlton Investment Company and J. D. Martin, B. B. Dudley and E. R. Dudley, covering the sale by said Carlton Investment Company to said Martin et al. of the following described lands, situate in Kern County, State of California, containing 23,962.47 acres, more or less, to wit: [124]

September 6, 1910.

In Township 25 South, Range 19 East, M. D. B. & M.

Section 24: All of;

In Township 25 South, Range 20 East, M. D. B. & M.

Section 14: Southwest quarter and Southwest quarter of Northwest quarter;
Section 18: All of;
Section 22: All of;
Section 24: All of;
Section 26: All of;
Section 28: All of;
Section 30: All of;
Section 32: All of;
Section 34: All of.

In Township 27 South, Range 19 East, M. D. B. & M.

Section 3: All of;
Section 4: All of;
Section 5: All of;
Section 10: All of;
Section 11: All of;
Section 13: All of;
Section 14: All of;
Section 15: All of.

In Township 27 South, Range 20 East, M. D. B. & M.

Section 13: All of;
Section 14: All of;

Section 15: All of;
Section 17: All of;
Section 18: All of;
Section 21: All of;
Section 22: All of;
Section 23: All of;
Section 24: All of;
Section 20: East half.

In Township 27 South, Range 21 East, M. D. B. & M.

Section 13: All of;
Section 14: All of;
Section 17: All of;
Section 18: All of; [125]
Section 19: All of;
Section 20: All of;
Section 21: All of;
Section 23: All of;
Section 24: All of;
Section 7: South half;
Section 8: South half;
Section 12: South half;
Section 9: West half and West half of East half of the Southeast quarter.

That the purchase price of said land was at the rate of Fifty Dollars per acre, aggregating $1,198,-123.50, $2500. of which had been paid by said Martin et al. upon the execution of said contract; that he had agreed with Martin et al. on behalf of the Associated Oil Company, to take an assignment

of said contract and that the Associated Oil Company should assume the benefits and obligations thereof, carrying Martin et al. for an undivided one-fourth interest in and to said lands free of cost or charge to them; that said assignment had been executed by Martin et al. and the Associated Oil Company, and said Martin et al. had executed to the Associated Oil Company a deed covering all of said lands, title to which may be acquired by the Associated Oil Company under and by virtue of the terms and conditions of said contract; that the Vice President and Secretary of the Associated Oil Company had executed to Martin et al. a deed conveying to them an undivided one-fourth interest in and to all the lands to which the Associated Oil Company may acquire title under and by virtue of the terms of said contract made and entered into by and between said Carlton Investment Company, of date July 7, 1910.

Thereupon Director Herold presented and moved the adoption of the following resolution:

> Be It Resolved that the action of the Assistant General Manager in making and entering into said contract as above outlined, and the action of the officers of this corporation in executing, acknowledging and delivering the documents above set forth, be and the same is hereby ratified, approved and confirmed, and adopted as the act and deed of this corporation, and the General Manager, or Assistant General Manager are hereby authorized to fully carry out and perform the terms and conditions of said

contract, and to do [126] all things necessary or incidental thereto, and to make payments only as they fall due, according to the terms and conditions thereof.

Motion to adopt the resolution was seconded and upon being put to a vote was unanimously carried and so declared by the Chair. [127]

San Francisco, California,
May 21, 1930.

I, J. P. Edwards, hereby certify that I am the duly elected, qualified and acting Secretary of the Associated Oil Company, and that the foregoing is a full, true and correct extract from minutes of meeting of Board of Directors of Associated Oil Company, duly called and held on September 6, 1910, at which meeting more than a quorum of the Board of Directors was present and voting in the affirmative.

J. P. EDWARDS,
Secretary,
Associated Oil Cimpany. [128]

March 5, 1912.

Thereupon Director Herold presented and moved the adoption of the following resolution:

WHEREAS, Heretofore, under date of July 7, 1910, J. D. Martin, E. R. Dudley and B. B. Dudley entered into a contract with the Carlton Investment Company for the purchase of certain lands described in said contract and in the

Minutes of September 6, 1910, appearing on pages 158 and following of Vol. 4 of the Minutes of this corporation, and

WHEREAS, Thereafter, on September 2, 1910, said J. D. Martin, B. B. Dudley and E. R. Dudley assigned said contract to this corporation, and

WHEREAS, Thereafter, on the 6th day of September, 1910, this Board authorized the General Manager or Assistant General Manager of this corporation to fully carry out and perform the terms and conditions of said contract and to do all things necessary or incidental thereto, and to make payments only as they fell due according to the terms and conditions thereof, as appears from pages 158 and following of said Minute Book, and [129]

WHEREAS, Payments have heretofore been made on said contract, according to the terms and conditions thereof, as follows:

1910.

July 7	By Martin & Dudley	$ 2500
Aug. 6	By Associated Oil Company	25000
Sept. 1	" " " "	12500
Oct. 1	" " " "	12500
Nov. 1	" " " "	12500
Dec. 1	" " " "	10000
Dec. 14	" " " "	75000
		$150000

AND WHEREAS, Said contract provided that the balance of the purchase price of said lands is to be paid in three equal yearly payments, payable on the 15th day of December, 1911, the 15th day of December, 1912, and the 15th day of December, 1913, respectively, said three latter payments to bear interest from and after the 15th day of December, 1910, until paid, at the rate of six per cent. per annum, payable annually, and

WHEREAS, The balance of said purchase price was $1,050,000 and one-third thereof, to-wit, $350,000, together with the sum of $65,000 interest on $1,050,000 from December 15, 1910 to December 15, 1911, was paid on December 14, 1911, leaving a balance of $700,000 payable in said purchase price as in said contract provided; and

WHEREAS, Under date of January 31, 1912, the Vice President and General Manager together with the Secretary of this company, entered into an agreement with said Carlton Investment Company, which said agreement is now present before this Board and has been read in full to this Board and is thoroughly understood by each member thereof and in and by which agreement it is provided that said Carlton Investment Company will accept in payment of said balance of $700,000 and interest thereon from and after December 15, 1911, at

the rate of six per cent. per annum, 760 First Refunding Mortgage Five per cent. Bonds of this Company, being at the rate of $925.00 per bond, with interest coupons Nos. 5 to 40 (both inclusive) attached, and the sum of $625.00 in money, and that this Company, its successors and assigns, shall have the right, privilege and option to purchase said bonds from said Carlton Investment Company, or from any pledgee or pledge holder of said bonds, at any time before the expiration of one year from and after the date of execution of said agreement, at the rate of $925.00 per bond, plus the accrued inter- [130] est thereon from the last semi-annual interest day preceding date of purchase up to the time of purchase; and

WHEREAS, Bonds numbered 16,039 to 16,-798 (both inclusive) with interest coupons attached as aforesaid, and said sum of $625. have been delivered and paid to said Carlton Investment Company pursuant to said agreement and said Carlton Investment Company has, pursuant to said agreement, executed and delivered to this company, deeds of all of the lands described in said contract of July 7, 1910, and in said Minutes of September 6, 1910, which deeds are all now of record in the office of the County Recorder of Kern County, in Vol. 238 of Deeds, Page 70 and Book 259 of Deeds, page 493 and are now on file in the office of the Secretary of this corporation; and

WHEREAS, The Vice President and General Manager reported the foregoing to the Executive Committee of this Board at its meeting held on the 6th day of February, 1912, and said Committee at said meeting ratified, approved and confirmed the action of the Vice President and General Manager and Secretary in the premises.

NOW THEREFORE, BE IT RESOLVED. That the action of the Vice President and General Manager and of the Secretary of this corporation, in entering into said agreement bearing date January 31, 1912, with said Carlton Investment Company and all of the acts of said Vice President and General Manager and of said Secretary and of the other officers of this company had and done pursuant to said agreement bearing date the 31st day of January, 1912, be and the same are hereby ratified, confirmed, approved and adopted as the agreement and acts and deeds of this corporation.

Motion to adopt the resolution was seconded by Director Whittier and upon being put to a vote was unanimously carried and so declared by the Chair. [131]

San Francisco, California,
May 21, 1930.

I, J. P. Edwards, hereby certify that I am the duly elected, qualified and acting Secretary of the Associated Oil Company, and that the foregoing

is a full, true and correct extract from minutes of meeting of Board of Directors of Associated Oil Company, duly called and held on March 5, 1912, at which meeting more than a quorum of the Board of Directors was present and voting in the affirmative.

J. P. Edwards,
Secretary,
Associated Oil Company. [132]

San Francisco, California,
May 21, 1930.

I hereby certify that the foregoing is a full, true and correct extract from Associated Oil Company's journal page No. 276, dated February 1912, the original of which is on file in the Accounting Department of Associated Oil Company, at its head office, 79 New Montgomery Street, San Francisco, California; that the remaining portions of said journal page relate to matters other than the above.

D. G. O'Harro,
Chief Accountant,
Associated Oil Company. [133]

FORM 381

DEPARTMENT NO.

AUDIT NO. 5220

ASSOCIATED OIL COMPANY

San Francisco, Cal., Aug. 6, 1910

REGISTERED IN

To WELLS FARGO NEVADA NAT'L BANK Dr.

Address SAN FRANCISCO, CAL.

E

For amount of Cashier's check to be used for real estate purchase. $25,000 00

Calculations correct. Examined by The above account has been examined, found correct and registered:

Voucher Clerk Cashier Auditor

RECEIVED, from **Associated Oil Company**

Twenty-five thousand# DOLLARS,

in full settlement of above account.

SAN FRANCISCO, CALIF 191 CHECK NO

Wells Fargo Nevada National Bank of San Francisco

IF PRESENTED WITHIN THIRTY DAYS FROM DATE AND PROPERLY RECEIPTED IN SPACE ABOVE.

PAY TO THE PAYEE OF THIS VOUCHER, AS SHOWN ABOVE, OR ORDER. $25,000.00

Twenty-five thousand# DOLLARS

IN FULL SETTLEMENT OF ABOVE ACCOUNT.

COUNTERSIGNED

2-K

ASSOCIATED OIL COMPANY

ASST. GENERAL MANAGER TREASURER.

Form 101

VOUCHER NO. _____

AUDIT NO. 8181

SOCIATED OIL COMPANY

San Francisco, Cal., Aug.29th,1910

FILED IN

AUG 1910

To Mercantile Trust Company, Dr.

Address San Francisco, Cal.

For amount of payment due on or before Sept.1st, 1910, under the terms of that certain agreement dated July 7th, 1910, between C. D. Martin, E.R. Dudley, E.E. Dudley with Carlton Investment Co.	$12,500	00

Calculations correct:

Examined by:

The above account has been examined, found correct and registered;

Auditor.

RECEIVED, August 29th 1910, from Associated Oil Company

Twelve thousand & five hundred - DOLLARS,

in full settlement of above account.

Mercantile Trust Company of San Francisco

2 - [illegible] TRUST OFFICER.

INSTRUCTIONS:

The receipt at the bottom of this voucher must be dated and signed by the payee, or by an authorized agent. When by the latter, the authority for so doing must be attached to the voucher or filed with this Company.
Officials of corporations must sign their full names and titles. Stamped signature or signature in pencil will not be accepted.
Should there be any mistake in the voucher, it should be returned to the AUDITOR for correction.

Form 101

VOUCHER NO.

AUDIT NO. 9112

SOCIATED OIL COMPANY

San Francisco, Cal., Sept.27th, '10

ENTERED IN SEP 1910

To Mercantile Trust Co., Dr.

Address San Francisco, Cal.

For amount of payment due on or before Oct.1st, 1910, under terms of that certain agreement dated July 7th, 1910, between G. D. Martin, E. R. Dudley, B.B. Dudley with Carlton Investment Co.	$12,500 00

Calculations correct:	Examined by:	The above account has been examined, found correct and registered:
C.C. Smith		Auditor.

RECEIVED, 9/28 1910. from Associated Oil Company

Twelve thousand & five hundred- DOLLARS.

in full settlement of above account.

Mercantile Trust Company of San Francisco

INSTRUCTIONS: 2 M

TRUST OFFICER.

The receipt at the bottom of this voucher must be dated and signed by the payee, or by an authorized agent. When by the latter, the authority for so doing must be attached to the voucher or filed with this Company.
Officials of corporations must sign their full names and titles. Stamped signature or signature in pencil will not be accepted.
Should there be any mistake in the voucher, it should be returned to the AUDITOR for correction.

Form 101

ENT NO. _____ AUDIT NO. 19173

OCIATED OIL COMPANY San Francisco, Cal., October 28th, 1910

ED IN 1910 } To Mercantile Trust Company, Dr.

Address San Francisco, Cal.

For amount of payment due on or before November 1st, 1910 under terms of that certain agreement dated July 7th, 1910, between G. D. Martin, E.R. Dudley and B.B. Dudley with Carlton Investment Co.	$12,500	00

OCT 28 1910

Calculations correct:	Examined by:	The above account has been examined, found correct and registered:
		Auditor.

RECEIVED, OCT. 28. 1910 _____ 190___, from Associated Oil Company

Twelve thousand & five hundred#- DOLLARS,

in full settlement of above account.

Mercantile Trust Company of San Francisco.

TRUST OFFICER.

INSTRUCTIONS:

The receipt at the bottom of this voucher must be dated and signed by the payee, or by an authorized agent. When by the latter, the authority for so doing must be attached to the voucher or filed with this Company.
Officials of corporations must sign their full names and titles. Stamped signature or signature in pencil will not be accepted.
Should there be any mistake in the voucher, it should be returned to the AUDITOR for correction.

Form 101

...MENT NO. ...

AUDIT NO. 11190

...OCIATED OIL COMPANY

San Francisco, Cal., Nov. 29th, '10

...RED IN

N... 1910

To Mercantile Trust Co., Dr.

Address San Francisco, Cal.

For amount of payment due on or before Dec. 1st, 1910, under terms of that certain agreement dated 7/7/10 between, G. D. Martin, R.R. Dudley, B.B. Dudley with the Carlton Inv.Co.		$10,000.00

WFA 5623
NOV 23 1910

...lations correct: P. Sanford

Examined by: C. Burns Cashier

The above account has been examined, found correct and registered: L. H. Whitney FOR THE Auditor.

...EIVED, NOV.30.1910 190..., from Associated Oil Company

...ten thousand- DOLLARS,

...ull settlement of above account.

Mercantile Trust Company of San Francisco

TRUST OFFICER.

INSTRUCTIONS: 2-0

The receipt at the bottom of this voucher must be dated and signed by the payee, or by an authorized agent. When by the latter, the authority for so doing is attached to the voucher or filed with this Company.
Officials of corporations must sign their full names and titles. Stamped signature or signature in pencil will not be accepted.
Should there be any mistake in the voucher, it should be returned to the AUDITOR for correction.

Form 101

…t No. ______ AUDIT No. [illegible]

…CIATED OIL COMPANY

San Francisco, Cal., Dec.13th, '1910

…IN

… 1910

To Mercantile Trust Co., Dr.

Address San Francisco, Calif.

For amount of payment due on or before Dec.15th, 1910, under terms of that certain agreement dated 7/7/10, between G. D. Martin, E. R. Dudley, B.B. Dudley and the Carlton Investment Company	$75,000.00

A F N 5633
DEC 1[illegible] 1910

…lations correct:	Examined by:	The above account has been examined, found correct and registered:
R. Sanford	C. E. Kuyn… Cashier	C. H. Whitney Auditor

…IVED, DEC. 15 1910 ______ 190__, from Associated Oil Company

…venty-five thousand#- Dollars,

…ull settlement of above account.

Mercantile Trust Company of San Francisco

2-P B McEvers

TRUST OFFICER.

INSTRUCTIONS:

The receipt at the bottom of this voucher must be dated and signed by the payee, or by an authorized agent. When by the latter, the authority for so doing …t be attached to the voucher or filed with this Company.

Officials of corporations must sign their full names and titles. Stamped signature or signature in pencil will not be accepted.

Should there be any mistake in the voucher, it should be returned to the AUDITOR for correction.

San Franciaco, California,
May 21, 1930.

I hereby certify that the foregoing are full, true and correct copies of Associated Oil Company's vouchers Nos. 8020, 8181, 9172, 10173, 11190, 12044, 12048 ---------- the originals of which are on file in the Accounting Department of Associated Oil Company, at its head office, 79 New Montgomery Street, San Francisco, California.

2-a

Chief Accountant,
Associated Oil Company

Form 892a. 500—9-11

Audit No. 12048

[...] No.

[...]ATED OIL COMPANY

San Francisco, Cal., Dec.14th, 1911

1911

To Carlton Investment Co., Dr.

Address San Francisco, Cal.

For amount due account purchase of 37½ sections of land in Kern County under agreement dated July 7th, 1910, between Carlton Investment Co. and J. D. Martin, E.R.Dudley and B.B. Dudley, and assigned to Associated Oil Co.

Total purchase price		$1,200,000.00	
Heretofore paid			
July 7th, 1910	$2,500.00		
Aug 6th, "	25,000.00		
Aug 29th, "	12,500.00		
Sep.28th, "	12,500.00		
Oct.28th, "	12,500.00		
Nov.29th, "	10,000.00		
Dec.13th, "	75,000.00	150,000.00	
Balance unpaid		$1,050,000.00	

5191

Balance being payable in three equal annual installments Dec.15th, 1911, Dec.15th, 1912 and Dec.15th, 1913, with interest at 6% payable annually.

One-third of above amount	350000 00
Interest on $1,050,000.00 from Dec.15th, 1910 to Dec.15th 1911	63000 00
Amount due	$413,000 00

[...]ions correct: Stanford

Examined by: [signature]

The above account has been examined, found correct and registered: [signature] Auditor.

[...]ED, Dec 14th 1911 191—, from Associated Oil Company

[...] hundred & thirteen thousand - - - - - - - - - - - - - - - - - Dollars,

[...] in settlement of above account.

Carlton Investment Co
[signature] President.

2-R

INSTRUCTIONS:

[...] receipt at the bottom of this voucher must be dated and signed by the payee, or by an authorized agent. When by the latter, the [...]ity for so doing must be attached to the voucher or filed with this Company.
[...]ials of corporations must sign their full names and titles. Stamped signature or signature in pencil will not be accepted.
[...] there be any mistake in this voucher, it should be returned to the AUDITOR for correction.

Real Estate	700,000.00	
Interest on Deferred Payments	5,366.67	
Bonds owned unpledged—First Refunding Mortgage 5% Bonds		703,000.00
Interest on Deferred Payments		2,366.67

Being the balance due on Carlton Investment Lands, same being paid for in First Refunding Mortgage 5% Bonds, as per letter of W. A. Sloan, dated February 2, 1912. File A-96 as follows:

Total purchase price of lands	1,200,000.00
Amount previously paid	500,000.00
Balance due	700,000.00
Interest from 12/15/11 to 2/1/12	5,366.67
	705,366.67
760 A. O. Co. 1st Refunding Mortgage 5% Bonds	703,000.00
	2,366.67
Less interest on $760,000.00 at 5% from 1/15/12 to 2/1/12	1,741.67
Balance paid in cash	625.00

[134]

[Pages 135-142] inclusive, are photostats inserted opposite.

PETITIONER'S EXHIBIT 3.

TRANSCRIPT from the Minutes of First Meeting of the Board of Directors of Belridge Oil Company, held on January 25, 1911.

The Chairman then presented a letter from Mr. W. J. Hole, under date of January 25th, 1911, addressed to this company, which letter is in the words and figures following, to-wit:

Los Angeles, Cal., January 25, 1911.

Belridge Oil Company,
Los Angeles, Cal.

Gentlemen:

I hold an option to purchase certain lands in the County of Kern, State of California, as particularly described and set forth in the accompanying agreement, said option being from Emily B. Hopkins, and dated January 5th, 1911, and which said option to purchase carries with it certain rights to drill for oil and gas as in said agreement set forth.

I am willing and agree to sell, transfer and assign all my right, title and interest in and to said option, to the Belridge Oil Company in consideration of the issue to me of 999,995 shares of its capital stock.

All of which is respectfully submitted for consideration of the Board of Directors of said company.

Yours truly,
(Signed) W. J. Hole.

The Board thereupon entered into a discussion of the proposition of Mr. Hole as set forth in his letter aforesaid, after reading the said option to purchase from Emily B. Hopkins, and Director Todd presented and moved the adoption of the resolution next following:

> WHEREAS, Mr. W. J. Hole, has proposed and agreed to sell and assign to this corporation, all of his right, title and interest in and to that certain option to purchase from Emily B. Hopkins, dated January 5th, 1911, covering the lands described in said option, presented and read to this Board, in consideration for the issue to said W. J. Hole of 999,995 shares of the capital stock of this corporation of the par value of $1.00 per share; and
>
> WHEREAS, This corporation deems the acceptance of said proposition to be for the best interests of this corporation and of its stockholders;
>
> NOW, THEREFORE, BE IT RESOLVED, That the foregoing proposition of said W. J. Hole, be and the same is hereby accepted; and the President and Secretary of this corporation are hereby authorized and instructed to receive from said W. J. Hole, proper instrument in writing, duly executed, conveying and transferring all of his right, title and interest in and to said option to purchase from Emily B. Hopkins, dated January 5th, 1911, to this corporation, free and clear of all incumbrances,

		Trustee for F. B.			)
		Henderson	65	20	6,250)
"	"	Frank H. Buck,			)
		Trustee for F. B.			)
		Henderson	61	21	6,250)
"	"	M. H. Whittier,			)
		Trustee for F. B.			)
		Henderson	105	22	6,250)

CERTIFICATES CANCELLED.

Date	To Whom Issued	Ledger No.	Certificate No.	Number of Shares
	Original issue			1,000,000
1911				
Feb'y 1	A. G. Peasley	92	1	1
" "	G. C. Braniger	59	3	1
" "	W. G. Lackey	85	4	1
" "	T. McC. Todd	99	5	1
" "	W. J. Hole	78	6	999,995

I, F. B. SUTTON, Secretary of Belridge Oil Company, hereby certify that I have compared the above and foregoing entries with the entries in the stock journal of the Belridge Oil Company and the same is a true and correct transcript thereof.

WITNESS my hand and the seal of Belridge Oil Company this 21st day of May, 1930.

[Seal] F. B. Sutton,
Secretary of Belridge Oil Company. [145]

[Pages 146-150] inclusive, are photostats inserted opposite.

Form 100 [illegible]

Fill this blank in with typewriter. Write on one side of paper only

CALIFORNIA STATE MINING BUREAU

FERRY BUILDING, SAN FRANCISCO

LOG OF OIL OR GAS WELL

Field South End Company BELRIDGE OIL COMPANY

Township 28 S Range 21 E Section 33 Elevation 650 Number of Well 302

In compliance with the provisions of Chapter 718, Statutes 1915, the information given herewith is a complete and correct record of the present condition of the well and all work done thereon, so far as can be determined from all available records.

Signed

Date Title (President, Secretary or Agent)

Oil Sands

1st sand from 350 to 360 4th sand from 490 to 506

2d sand from 375 to 395 5th sand from 540 to 570

3d sand from 450 to 473 6th sand from to

Important Water Sands

2d sand from to 3d sand from to

1st sand from to 4th sand from to

Casing Record

Size of Casing	Where Landed	Where Cut	Weight Per Foot	Threads Per Inch	Kind of Shoe	Make of Casing	Cemented Yes	Cemented No
12 1/2	559		40	10				

Cementing or Other Shut-off Record

Size	Sacks	Time Set	Method	Test and Result (Give water level and bailing results)

U. S. BOARD OF TAX APPEALS DIV. 16 DOCKET 31218 ADMITTED IN EVIDENCE MAY 22 1930 PETITIONER'S EXHIBIT 5

Plugs and Adapters

Heaving Plug—Material Length Where set

Adapters —Material Size

Perforations

State clearly whether a machine was used or casing was drilled in shop

From	To	Size of Holes	Number of Rows	Holes Per Foot	Machine—Shop
ft.	ft.				
ft.	ft.				
ft.	ft.				

Thirty days after completion well produced 100 harrels of oil per day.

The gravity of oil was 26.5 degrees Baumé. Water in oil amounted to per cent.

Names of Drillers	Names of Tool Dressers
Wm Dabney	W H Jarvis
W H Kimball	Ed Jennings
W. H. Kreighbaum	W. H. Kreighbaum

Date drilling started March 16, 1911. Date well was completed April 7 1911.

BELRIDGE OIL COMPANY

372 PACIFIC ELECTRIC BUILDING

TOM E. GWEEN PRESIDENT

LOS ANGELES, CAL.

#302

Well No. 2

Elevation 650'

5-a

From	To		
1	15	15	Lime stone and gypsum
15	30	15	Red sand
30	45	15	Grey sand
45	60	15	Yellow clay
60	128	68	Blue shale.
128	135	7	Blue sand
135	260	123	Blue shale
260	290	30	Dry oil sand
290	305	15	Blue shale
305	330	25	White clay
330	350	Black	Oil Sand
350	360	10	Oil Sand — oil struck at 350
360	375	15	Blue shale
375	395	20	Oil Sand
395	450	55	Blue shale
450	473	23	Oil Sand
473	490	17	Blue clay
490	506	16	Oil Sand
506	540	34	Blue clay
540	570	30	Oil Sand
570	575	5	Blue shale

5.5

Fill this blank in with typewriter. Write on one side of paper only

CALIFORNIA STATE MINING BUREAU

FERRY BUILDING, SAN FRANCISCO

LOG OF OIL OR GAS WELL

[Fie]ld South End Company BELRIDGE OIL COMPANY

[T]ownship 26 S Range 21 E Section 33 Elevation 650 Number of Well 302

In compliance with the provisions of Chapter 718, Statutes 1915, the information given herewith is a complete and [co]rrect record of the present condition of the well and all work done thereon, so far as can be determined from all [av]ailable records.

Signed

[Da]te Title (President, Secretary or Agent)

Oil Sands

[1st s]and from 350 to 360 4th sand from 490 to 506

[2d s]and from 375 to 395 5th sand from 540 to 570

[3]d sand from 450 to 473 6th sand from to

Important Water Sands

[1st s]and from to 3d sand from to

[2d s]and from to 4th sand from to

Casing Record

	Where Landed	Where Cut	Weight Per Foot	Threads Per Inch	Kind of Shoe	Make of Casing	Cemented Yes	Cemented No	
	559		40	10					

Cementing or Other Shut-off Record

	Sacks	Time Set	Method	Test and Result (Give water level and bailing results)

Plugs and Adapters

U.S. BOARD OF TAX APPEALS DIV 16 DOCKET 31218 ADMITTED IN EVIDENCE MAY 23 1930 PETITIONER'S EXHIBIT 5

[Heav]ing Plug—Material Length Where set

[Adap]ters —Material Size

Perforations

State clearly whether a machine was used or casing was drilled in shop

From	To	Size of Holes	Number of Rows	Holes Per Foot	Machine—Shop
	ft.				
	ft.				
	ft.				

Thirty days after completion well produced 100 barrels of oil per day.

[T]he gravity of oil was 26.5 degrees Baumé. Water in oil amounted to per cent.

Names of Drillers	Names of Tool Dressers
Wm Dobney	W H Jarvis
W. H. Kimball	Ed Jennings
W. H. Kreighbaum	W. H. Kreighbaum

[Date] drilling started March 18, 1911. Date well was completed April 7, 1911.

Formations Penetrated by Well

Depth To Top of Formation	Depth To Bottom of Formation	Thickness	Name of Formation

5-B

Form 114 15077—5-16-15—100

Fill this blank in with typewriter. Write on one side of paper only

CALIFORNIA STATE MINING BUREAU

FERRY BUILDING, SAN FRANCISCO

LOG OF OIL OR GAS WELL

Field South End Company [B]ELRIDGE OIL COMPANY

Township 26 S Range 21 E Section 33 Elevation 582 Number of Well 101

In compliance with the provisions of Chapter 718, Statutes 1915, the information given herewith is a complete and correct record of the present condition of the well and all work done thereon, so far as can be determined from all available records.

Signed

Date Title (President, Secretary or Agent)

Oil Sands

1st sand from 445	to 480	4th sand from 650	to 760		
[2d sand] from 602	to 606	5th sand from	to		
3d sand from 635	to 640	6th sand from	to		

Important Water Sands

2d sand from	to	3d sand from	to
1st sand from	to	4th sand from	to

Casing Record

Size of Casing	Where Landed	Where Cut	Weight Per Foot	Threads Per Inch	Kind of Shoe	Make of Casing	Cemented Yes	Cemented No
16	240		54	S.P				
12½	761		40	10				

Cementing or Other Shut-off Record

Size	Sacks	Time Set	Method	Test and Result (Give water level and bailing results)

Plugs and Adapters

Heaving Plug—Material Length Where set

Adapters —Material Size

BOARD OF TAX APPEALS
DIV 16 DOCKET 3/218
MAY 22 1930
PETITIONER'S EXHIBIT 5

Perforations

State clearly whether a machine was used or casing was drilled in shop

From	To	Size of Holes	Number of Rows	Holes Per Foot	Machine—Shop
ft.	ft.				
ft.	ft.				
ft.	ft.				

Thirty days after completion well produced 100 barrels of oil per day.

The gravity of oil was 25.3 degrees Baumé. Water in oil amounted to

BELRIDGE OIL COMPANY

372 PACIFIC ELECTRIC BUILDING

[B]URTON E. GREEN
PRESIDENT

LOS ANGELES, CAL.

#101

Well No. 1

Elevation 582"

5-C

From	To		
1	20	20	White sand
20	50	30	Sand stone
50	52	2	Blue clay
52	80	28	Dark sand
80	115	35	Brown sand
115	125	10	Blue clay
125	150	25	Sandy shale
150	155	5	Blue shale
155	190	35	Sand and blue clay
190	230	40	Sandy shale
230	260	30	Hard sand
260	280	20	Grey sand
280	290	10	Tar sand
290	320	30	Blue shale
320	330	10	Brown shale
330	360	30	Tar sand
360	365	5	Blue shale
365	397	32	Tar sand
397	400	3	Sandy shale
400	410	10	Blue shale
410	415	5	Tar sand
415	440	25	Brown sandy shale
440	445	5	Blue shale
445	480	35	Oil sand
480	545	65	Blue clay
545	548	3	Gravel
548	597	49	Blue clay
597	600	3	Grey sand
600	602	2	Blue clay
602	606	4	Oil Sand
606	608	2	Hard sand
608	611	3	Blue shale
611	630	19	Brown shale
630	635	5	Hard sand
635	640	5	Oil Sand
640	650	10	Brown shale
650	760	110	Oil Sand
760	775	22	Brown shale
775	782		" "
		782	

Fill this blank in with typewriter. Write on one side of paper only

CALIFORNIA STATE MINING BUREAU

FERRY BUILDING, SAN FRANCISCO

LOG OF OIL OR GAS WELL

Field South End Company [illegible] RIDGE OIL COMPANY

Township 28 S Range 21 E Section 33 Elevation 582 Number of Well 101

In compliance with the provisions of Chapter 718, Statutes 1915, the information given herewith is a complete and correct record of the present condition of the well and all work done thereon, so far as can be determined from all available records

Signed

Date

Title (President, Secretary or Agent)

Oil Sands

1st sand from 445 to 4[illegible]0 4th sand from 650 to 760

2d sand from 602 to 606 5th sand from to

3d sand from 635 to 640 6th sand from to

Important Water Sands

2d sand from to 3d sand from to

1st sand from to 4th sand from to

Casing Record

Size of Casing	Where Landed	Where Cut	Weight Per Foot	Threads Per Inch	Kind of Shoe	Make of Casing	Cemented Yes	Cemented No	
[illegible]	240		54	S.P					
[illegible]	721		40	10					

Cementing or Other Shut-off Record

Size	Sacks	Time Set	Method	Test and Result (Give water level and bailing results)

Plugs and Adapters

Heaving Plug—Material Length Where set

Adapters —Material Size

[illegible] BOARD OF TAX APPEALS
DIV 16 DOCKET 31218
ADMITTED IN EVIDENCE
MAY 22 1930
PETITIONER'S
EXHIBIT 5

Perforations

State clearly whether a machine was used or casing was drilled in shop

From	To	Size of Holes	Number of Rows	Holes Per Foot	Machine—Shop
ft.	ft.				
ft.	ft.				
ft.	ft.				

Thirty days after completion well produced 10[illegible] barrels of oil per day.

The gravity of oil was [illegible]3 degrees Baumé. Water in oil amounted to per cent.

Names of Drillers	Names of Tool Dressers
[illegible]	C H Taylor
C Hansel	Geo adams
R Smith	R Harris
[illegible] Woodward	F. Jeffries

Drilling started March 11-1911 Date well was completed April 21, 1911

Formations Penetrated by Well

Depth to Top of Formation	Depth to Bottom of Formation	Thickness	Name of Formation
			5-15

DEPARTMENT OF THE INTERIOR
U S GEOLOGICAL SURVEY

CALIFORNIA
CHOLAME QUADRANGLE

DEPARTMENT OF THE INTERIOR
U S GEOLOGICAL SURVEY

PLATE I.

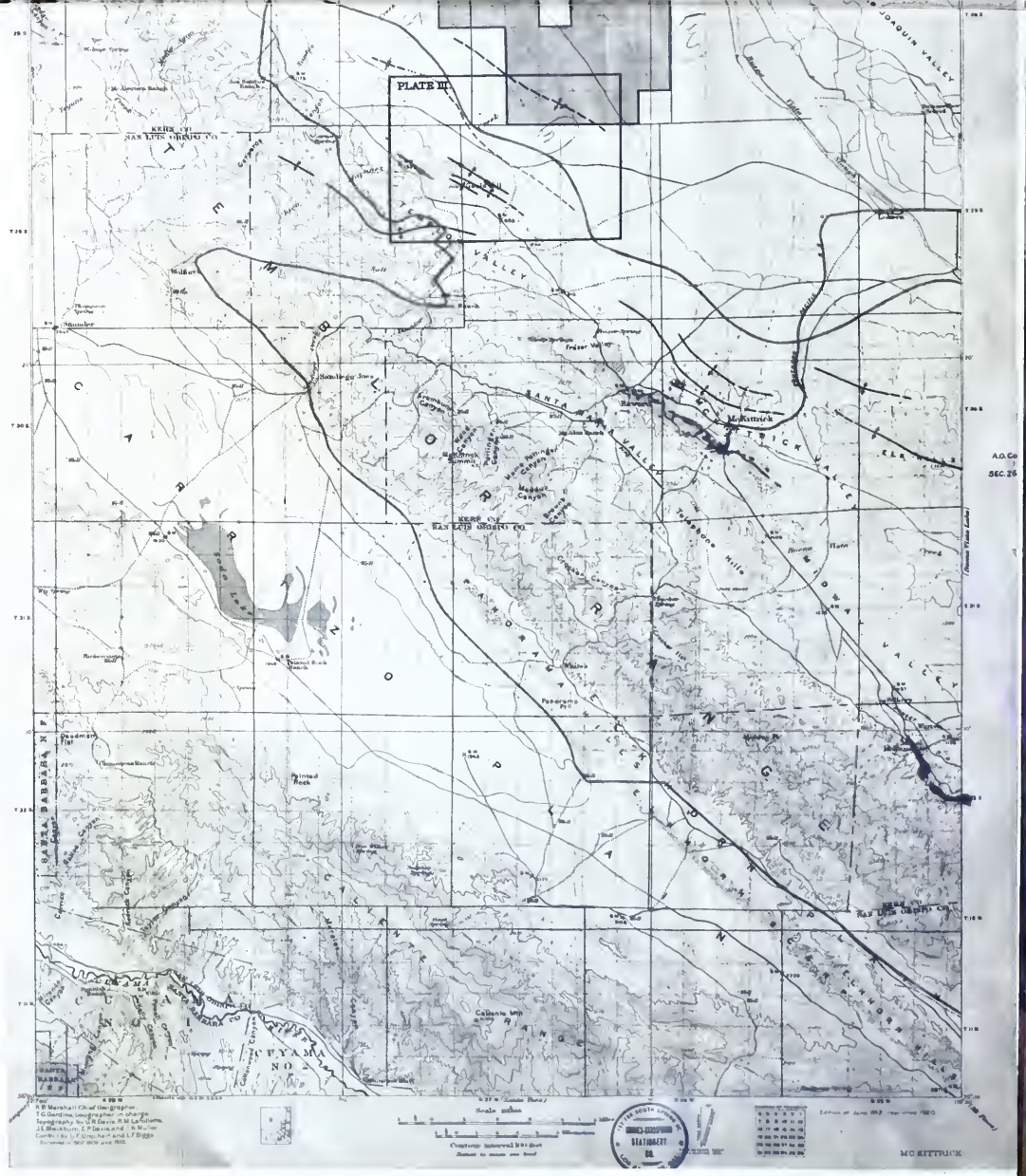
CALIFORNIA
LOST HILLS QUADRANGLE

U S BOARD OF TAX APPEALS
DIV. ..... DOCKET .....
MAY 22 1930
PETITIONER'S EXHIBIT 6

U S BOARD OF TAX APPEALS
DIV. ..... DOCKET .....
MAY 22 1930
PETITIONER'S EXHIBIT 6

GEOLOGIC AND STRUCTURAL DATA
AS OF
1908 AND 1911.

- Belridge holdings.
- Limits of productive oil territory (U.S.G.S. Bul. 406)
- Anticline : actual and probable.
- Syncline : actual and probable.
- Oil and gas showings.
- Producing areas, 1911 and earlier.
- Producing area : Midway, 1908.



[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF THE RECORD.

To the Clerk of the United States Board of Tax Appeals:

You are requested to make a transcript of record to be filed in the United States Circuit Court of Appeals for the Ninth Circuit pursuant to the review taken in the above entitled case, and to include in such transcript of record copies duly certified as correct of the following documents:

(1) The docket entries of the proceedings before the Board of Tax Appeals.

(2) Pleadings before the Board.

a. Petition with Exhibit "A" (a copy of notice of deficiency attached).

(3) Findings of Fact, opinion and decision of the Board, including final order of redetermination.

(4) Dissenting opinion filed by Hon. Stephen J. McMahon, Member of the United States Board of Tax Appeals. [151]

(5) Petition for Review and Assignments of Error.

a. Notice of filing thereof with admission of service.

b. This Praecipe.

(6) Statement of Evidence with all exhibits attached.

CLAUDE I. PARKER,
JOHN B. MILLIKEN,
808 Bank of America Building,
Los Angeles, California,
LLEWELLYN A. LUCE,
937 Munsey Building,
Washington, D. C.
Counsel for Petitioner.

Service of copy accepted, December 19, 1932.

C. M. CHAREST,
General Counsel, Bureau of Internal Revenue,
Counsel for Respondent.

[Endorsed]: Filed December 19, 1932. [152]

[Title of Court and Cause.]

CLERK'S CERTIFICATE TO TRANSCRIPT OF RECORD.

I, B. D. Gamble, clerk of the U. S. Board of Tax Appeals, do hereby certify that the foregoing pages, 1 to 152, inclusive, contain and are a true copy of the transcript of record, papers, and proceedings on file and of record in my office as called for by the Praecipe in the appeal as above numbered and entitled.

In testimony whereof, I hereunto set my hand and affix the seal of the United States Board of Tax

Appeals, at Washington, in the District of Columbia, this 21st day of February, 1933.

[Seal] B. D. GAMBLE,
Clerk,
United States Board of Tax Appeals.

[Endorsed]: No. 7103. United States Circuit Court of Appeals for the Ninth Circuit. Belridge Oil Company, a corporation, Petitioner, vs. Commissioner of Internal Revenue, Respondent. Transcript of Record. Upon Petition to Review an Order of the United States Board of Tax Appeals.

Filed March 4, 1933.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.